SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 62

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, AND R. G. LANDIS.

No. 64

SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, AND R. G. LANDIS, APPELLANTS

vs.

THE UNITED STATES OF AMERICA

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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1 In District Court of the United States for the Southern District of New York

Civil No. 10–393

UNITED STATES OF AMERICA

v.

BAUSCH & LOMB OPTICAL COMPANY, ET AL.

Praecipe for transcript of record

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers viz:

1. Bill of complaint.
2. Answer of each defendant to the bill of complaint.
3. Official record of the stenographic minutes, containing the transcript of evidence and proceedings before the Honorable Simon H. Rifkind, United States District Judge, Southern District of New York, on September 16, 17, 18, 19, 24, 25, 26, and 29, 1941.
4. The following exhibits:

(a) Plaintiff's Exhibits 1–10a inclusive, 11–38 inclusive 42–207 inclusive.

(b) Defendants' Exhibits K, L, Q, R, S, U, V, W, DD, and EE.

5. Opinion of Honorable Simon H. Rifkind, United States District Judge, Southern District of New York, dated May 27, 1942.
6. Plaintiff's proposed findings of fact and conclusions of law.
7. Findings of fact and conclusions of law, filed November 6, 1942.
8. Motion to make additional findings of fact.
9. Order making additional finding of fact and the additional finding of fact.

2 10. Final judgment of the District Court, filed February 1, 1943.

11. Petition for appeal.
12. Assignment of Errors and Prayer for Reversal.
13. Order allowing appeal.
14. Proof of service.
15. Statement required by Rule 12.
16. Citation.

17. Statement of jurisdiction.
18. This praecipe.

TOM C. CLARK,
Assistant Attorney General.
SAMUEL S. ISSEKS,
Special Assistant to Attorney General.
IRVING B. GLICKFELD,
Special Assistant to the Attorney General.

This 1 day of April 1943.

3 In District Court of the United States for the Southern District of New York

[Title omitted.]

Praecipe of Defendants-Appellants Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis for additional portions of record.

To the Clerk of the District Court of the United States:

In addition to the portions of the record indicated for incorporation into the transcript in the plaintiff-appellant's praecipe dated April 1, 1943, please incorporate into the transcript the following papers on the appeal of Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis:

1. Plaintiff's Exhibits 10B, 39 through 41 inclusive, and Defendants' Exhibits A, B, C, D, E, F, G, H I, J, M, N, O, P, S1, T, X, Y, Z, AA, BB, and CC.
2. Said defendants-appellants' petition for appeal together with their assignment of errors and prayer for reversal.
3. Said defendants-appellants' statement pursuant to Rule 12, paragraph 1, of the Rules of the Supreme Court.
4. The order allowing said defendants-appellants' appeal.

4 5. Said defendants-appellants' appeal bond.

6. The citation to the United States of America on said defendants-appellants' appeal.
7. Said defendants-appellants' statement directing attention to Rule 12, paragraph 3, of the Rules of the Supreme Court.
8. Said defendants-appellants' proof of service.
9. This praecipe.

Dated, New York, N. Y., April 2, 1943.

LEHRICH AND LEHRICH,
Attorneys for said defendants-appellants,
By HYMAN D. LEHRICH,
a member of said firm,
60 Wall Street, New York, N. Y.

6 In the District Court of the United States for the Southern District of New York

Civil Action No. 10-393

UNITED STATES OF AMERICA, PLAINTIFF

v.

BAUSCH & LOMB OPTICAL COMPANY; M. HERBERT EISENHART; BEN A. RAMAKER; JOSEPH F. TAYLOR; SOFTLITE LENS COMPANY, INC.; NATHANIEL SINGER; R. G. LANDIS; MORRIS SINGER; DEFENDANTS

Complaint

The United States of America, seeking equitable relief by its attorney Samuel S. Isseks, Special Assistant to the Attorney General, acting under the direction of the Attorney General, complains and alleges on information and belief as follows:

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," said act being commonly known as the Sherman Antitrust Act, against the above-named defendants in order to prevent violations
7 by them jointly and severally as hereinafter alleged of Sections 1 and 3 of said Sherman Antitrust Act.

2. The alleged unlawful acts and violations hereinafter described, including the contracts, combinations and conspiracy to restrain trade and commerce among the several States of the United States and between the States and the District of Columbia, and in the District of Columbia, have been and are being carried out in part and made effective within the Southern District of New York, and many of the unlawful acts done in pursuance thereof have been performed and are being performed by the defendants within said District. Bausch & Lomb Optical Company has manufactured lenses pursuant to said unlawful contracts, combinations, and conspiracy at its plant in Rochester, New York, and, through its affiliated and controlled wholesale branches, has sold, shipped, and delivered certain of said lenses in interstate trade and commerce to customers living in the several States of the United States and in the District of Columbia. Bausch & Lomb Optical Company has maintained and maintains a branch office within the Southern District of New York which sells and delivers certain of said lenses under the terms and marketing conditions of said unlawful contracts, combinations, and conspiracy. Soft-Lite Lens Company, in

carrying out said unlawful contracts, combination and conspiracy, has approved wholesalers and has licensed retailers in the several States of the United States and in the District of Columbia to deal in, handle, and sell lenses manufactured and distributed pursuant to said unlawful contracts, combinations, and conspiracy,
8 and Soft-Lite Lens Company has obtained certain of said lenses from Bausch & Lomb Optical Company, and said Soft-Lite Lens Company, from its principal place of business within this District, has sold, shipped, and delivered said lenses in interstate trade and commerce to customers living in the several States of the United States and in the District of Columbia, for resale under the terms and marketing conditions of said unlawful contracts, combinations, and conspiracy. In some cases the wholesalers purchasing such lenses from Soft-Lite Lens Company or from Bausch & Lomb's affiliates resell such lenses to other wholesalers and to retailers located in States other than the State wherein said wholesaler-vendor is located.

DESCRIPTION OF DEFENDANTS

3. The defendant Bausch & Lomb Optical Company (sometimes hereinafter referred to as Bausch & Lomb) is a corporation organized under and existing by virtue of the laws of the State of New York, having its principal place of business in Rochester, New York. Bausch & Lomb manufactures lenses and ophthalmic glass for lenses at its plant in Rochester, New York, and sells and distributes said lenses to wholesalers and retailers located in the several States of the United States and in the District of Columbia. Bausch & Lomb maintains an office in the Borough of Manhattan within the Southern District of New York.

4. The following individual defendants are associated with defendant Bausch & Lomb, and each has held and now holds the official title or position therewith shown below, and has
9 participated and now participates in the direction and management of Bausch & Lomb. Said individual defendants have approved, authorized, ordered, or done the acts of said corporate defendant constituting the offenses hereafter charged in this complaint.

10 Name of individual defendant	Address	Official title or position
M. Herbert Eisenhart	Rochester, N. Y.	President.
Ben A. Ramaker	Rochester, N. Y.	Sales Manager.
Joseph F. Taylor	Rochester, N. Y.	Treasurer.

5. The defendant Soft-Lite Lens Company, Inc. (sometimes hereinafter referred to as Soft-Lite Company), is a corporation organized under and existing by virtue of the laws of the State of New York, having its principal place of business in the Borough of Manhattan, State of New York and within this District. Soft-Lite Company is engaged in the distribution of tinted lenses for use in spectacles and eyeglasses. Soft-Lite Company licenses optical retailers in the several States of the United States and in the District of Columbia to handle, deal in, and sell such lenses.

6. The following individual defendants are associated with defendant Soft-Lite Company, and each has held and now holds the official title or position therewith shown below, and each has participated and now participates in the direction and management of Soft-Lite Company. Said individual defendants have approved, authorized, ordered, or done the acts of said corporate defendant constituting the offenses hereafter charged in this complaint.

10 Name of individual defendant	Business address	Official title or position
Nathaniel Singer	New York City	President and Member of Board of Directors.
R. G. Landis	New York City	Vice President and Member of Board of Directors.
Morris Singer	New York City	Chairman, Board of Directors.

DEFINITIONS AND DESCRIPTION OF SUBJECT MATTER

7. The term "lens," wherever used in this complaint, means a lens manufactured of glass to give normal vision to the user thereof, as in all types of spectacles and eyeglasses, but shall not mean a lens employed to give abnormal vision to the user, as in telescopes, binoculars, and microscopes.

8. The term "tinted lens," wherever used in this complaint, means a lens manufactured of colored or "tinted" glass. The coloring or tint of such lenses is purported to cut down in varying degrees certain harmful light rays that penetrate untinted glass.

BACKGROUND OF THE CONSPIRACY

9. In 1924 Bausch & Lomb contracted and agreed with Optical Service Corporation (predecessor company of Soft-Lite Company) to manufacture for said Corporation certain tinted ophthalmic glass and from that glass, tinted lenses, which said Corporation sold and distributed under the trade-mark of "Soft-Lite" lenses. At that time, or shortly thereafter, Bausch & Lomb also

agreed not to manufacture tinted ophthalmic glass or tinted lenses similar to that manufactured for Optical Service Corporation, for any other customer. Defendant Bausch & Lomb and
11 Optical Service Corporation worked in close cooperation in promoting the sale and distribution of Soft-Lite lenses, and the wholesale affiliates of Bausch & Lomb were the principal distribution outlets of Optical Service Corporation.

10. On or about April 3, 1929, defendant Soft-Lite Company was organized and incorporated under the laws of the State of New York, with an office and principal place of business in the Borough of Manhattan and within this District, for the purpose, among other things, of manufacturing and distributing eyeglasses and tinted lenses. Optical Service Corporation transferred its offices, assets, accounts and business policies to defendant Soft-Lite Company, and many of the officers of Optical Service Corporation became officers of Soft-Lite Company.

11. Defendant Soft-Lite Company continued the close trade relationship theretofore existing between Optical Service Corporation and defendant Bausch & Lomb. Defendant Soft-Lite Company continued to purchase tinted lenses from defendant Bausch & Lomb and distributed them and permitted Bausch & Lomb to distribute them according to certain arbitrary rules hereinafter more particularly set out.

OFFENSES CHARGED

12. The defendants have violated and are now violating Sections 1 and 3 of the Sherman Antitrust Act by unlawfully contracting, combining, and conspiring to restrain interstate trade and commerce in tinted lenses among the several States of the United States, and between the States and the District of
12 Columbia and in the District of Columbia, and more particularly by contracting, combining, and conspiring:

"(a) to designate and select, according to certain arbitrary rules and regulations, wholesalers and retailers to handle, deal in, and sell certain tinted lenses known as Soft-Lite lenses;

"(b) to sell such tinted lenses only to such designated and selected wholesalers and retailers;

"(c) to restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected;

"(d) to force such wholesalers and retailers to observe certain arbitrary and unreasonable prices in reselling such tinted lenses; and

"(e) to limit the sale and distribution in interstate trade and commerce of tinted lenses similar to Soft-Lite lenses." Such con-

tracts, combinations, and conspiracy to restrain interstate trade and commerce in tinted lenses are hereinafter set forth.

13. Following the organization of defendant Soft-Lite Company, the defendants herein combined and conspired to establish and maintain a closely regulated scheme of distribution by means of which the defendants would control completely all phases of the marketing of certain unpatented tinted lenses, including the selection and designation of wholesalers and retailers of such lenses and the fixing and maintenance of minimum resale prices of such lenses.

14. Pursuant to the plan set out in paragraph 13 hereof defendant Bausch & Lomb manufactured certain unpatented tinted
13 lenses and unpatented tinted ophthalmic glass from which such lenses are made exclusively for defendant Soft-Lite Company, and defendant Bausch & Lomb has declined to manufacture such lenses and such ophthalmic glass for customers other than defendant Soft-Lite Company, with the intent of protecting said unpatented tinted lenses from the competition of similar lenses sold and distributed by others.

15. Pursuant to said contracts, combinations, and conspiracy, Bausch & Lomb sells its entire output of Soft-Lite lenses to defendant Soft-Lite Company. Defendant Bausch & Lomb repurchases the Soft-Lite lenses it distributes through its own wholesale branches from defendant Soft-Lite Company and distributes said lenses under the system of controlled distribution established and agreed to by the defendants named herein and imposed and enforced by defendant Soft-Lite Company. Defendant Bausch & Lomb through its affiliated and controlled branches has been and is the largest single wholesaler of Soft-Lite lenses and annually distributes approximately two-thirds of all such lenses.

16. Pursuant to said combination and conspiracy, the defendants named herein have worked in close cooperation in promoting the sale and distribution of Soft-Lite lenses, and defendant Bausch & Lomb has conferred, communicated, and agreed with Soft-Lite Company from time to time in regard to the prices that defendant Soft-Lite Company should establish for the resale of Soft-Lite lenses by the wholesalers thereof and in regard to the wholesalers and retailers who should be approved and designated to handle, deal in, and sell such unpatented tinted lenses.

14 17. Defendant Soft-Lite Company has sold and sells the unpatented tinted lenses designated by it as "Soft-Lite" lenses only to wholesalers and only to wholesalers who observe and adhere to certain abitrary rules and regulations agreed upon by the defendants and established and enforced by defendant Soft-Lite Company. The defendants name herein acting through de-

fendant Soft-Lite Company have established and establish the minimum prices at which such wholesalers can resell such Soft-Lite lenses, and have required and require such wholesalers to resell such lenses only to retailers licensed by defendant Soft-Lite Company.

18. Pursuant to said combination and conspiracy, the defendants have ceased to sell such tinted lenses to wholesalers whom said defendants considered did not observe and adhere to the abitrary rules and regulations set up and established by the defendants for the distribution of Soft-Lite lenses. The defendants have also refused to sell Soft-Lite lenses to wholesalers who were considered by such defendants to be price cutters or to be engaged in business practices of a nature disapproved by the defendants.

19. Although defendant Soft-Lite Company does not sell Soft-Lite lenses directly to retailers, as a further step in establishing and maintaining said system of controlled distribution the defendants named herein have established an elaborate system of licensing retailers under rights purportedly given Soft-Lite Company by possession of the alleged trade-mark "Soft-Lite. The purported trade-mark "Soft-Lite" is plainly descriptive and never has and does not now give any indication of the origin of the said lens. In truth and fact the words "Soft-Lite" do not constitute a valid and genuine trade-mark. Nevertheless, the defendants, acting through the Soft-Lite Company and purporting to rely upon a trade-mark privilege, have attempted to use this invalid and spurious trade-mark as a basis for issuing licenses to retailers to handle, deal in, and sell unpatented, tinted lenses, whereby the said defendants have controlled the activities, prices, and trade practices of the said retailers in handling, distributing and selling unpatented, tinted lenses.

20. Under the terms of said retailer licenses the defendants, acting through defendant Soft-Lite Company, have required and require the retailer licensees to sell said Soft-Lite lenses only to the public and to do nothing "which may adversely affect the prestige of said lenses." The licensee stipulates that the promotion or sale of other lenses of a similar color or the substitution of other lenses for Soft-Lite lenses may adversely affect the prestige of Soft-Lite lenses, thereby denying to the retailer licensee the right to handle, deal in, and sell tinted lenses similar in color to Soft-Lite lenses.

21. The retailer license mentioned in paragraph 20 hereof provides that the retailer shall sell Soft-Lite lenses at the "price prevailing in the locality". In each locality in which there is a wholesale outlet controlled by or affiliated with Bausch & Lomb, the "prices prevailing in the locality" to which the retailer is required by his license to conform is a price set by the wholesale

outlet affiliated with or controlled by Bausch & Lomb. In
16 localities in which there is no wholesale outlet affiliated with or controlled by Bausch & Lomb, the "price prevailing locally" to which the retailer is required to conform by his license is set by some other retailer or group of retailers. The effect of this provision of the license is to require retailers to conform to the prices fixed as described in this paragraph, to maintain among all of the retailers in each locality uniform prices for long periods of time and generally to prevent price competition.

22. Pursuant to said combination and conspiracy, the defendants have refused to license retailers to sell Soft-Lite lenses whom said defendants considered to be price cutters or engaged in business practices of a nature disapproved by the defendants. The defendants have enforced the provisions of such licenses, have compelled retailer licensees to abstain from dealing in lenses similar to Soft-Lite lenses, and have suppressed price competition on the part of such retailer licensees in the sale of Soft-Lite lenses.

23. Defendant Soft-Lite Company sells Soft-Lite lenses only to wholesalers approved by it and compels such wholesalers to resell such lenses only to retailers licensed by defendant Soft-Lite Company. Other wholesalers and retailers of ophthalmic goods who are not approved or licensed by Soft-Lite Company can not obtain or buy said Soft-Lite lenses.

24. As a result of the combination and conspiracy hereinbefore set out, the defendants have controlled the sale, prices, distribution, and marketing of Soft-Lite lenses in the several States of the
17 United States and between the States and the District of Columbia, and in the District of Columbia, and wholesalers and retailers have either been forced to observe the arbitrary rule, regulation, and price control prescribed by said defendants or have been denied altogether the right to handle, deal in, and sell Soft-Lite lenses. Consumers have been limited in the number of places where they can obtain Soft-Lite lenses and service on such lenses and have been compelled to pay arbitrary, artificial, unreasonable, and noncompetitive prices for such lenses. The majority of approved Soft-Lite wholesalers and licensed Soft-Lite retailers purchase Soft-Lite lenses that move in interstate trade and commerce, and the majority of such wholesalers including all of such wholesalers located in the Southern District of New York, resell Soft-Lite lenses in interstate trade and commerce.

CONCLUSION

25. By establishing and maintaining the contracts, conspiracy, and combination in restraint of trade, and by the various acts hereinbefore alleged, the defendants herein (a) have completely con-

trolled the marketing of Soft-Lite lenses; (b) have arbitrarily designated and selected wholesalers and retailers of such lenses; (c) have fixed and maintained arbitrary, artificial, and noncompetitive prices for the sale of Soft-Lite lenses; (d) have limited the sale and distribution of tinted lenses similar to Soft-Lite lenses; (e) have discouraged and impeded the progress of science and the useful arts and have used the trade-mark laws of the United States for purposes not consistent with the constitutional basis
18 for those laws; and (f) have unreasonably restrained trade and commerce in tinted lenses in violation of the laws of the United States.

PRAYER FOR RELIEF

Wherefore, plaintiff prays:

1. That the aforesaid contracts, combinations, and conspiracy in restraint of interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, be adjudged and decreed to be unlawful and that the agreements, understandings and practices alleged in this complaint be adjudged and decreed to be in violation of the Sherman Antitrust Act.

2. That the Court adjudge and decree that the defendants have contracted, combined, and conspired to restrain interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, in violation of Sections 1 and 3 of the Sherman Antitrust Act.

3. That the Court order and adjudge any and all agreements and contracts between Bausch & Lomb Optical Company and the Soft-Lite Lens Company, Inc., with respect to the distribution of Soft-Lite lenses to represent an illegal combination and conspiracy in restraint of interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District of Columbia, and that the Court perpetually enjoin said defendants, the officers and directors thereof, and the
19 individual defendants from observing in any respect any such agreements with respect to the distribution of Soft-Lite lenses and from entering into and executing similar agreements in the future.

4. That the Court order and adjudge the system of approving wholesalers and the system of licensing retailers of the corporate defendants named herein to represent an illegal combination and conspiracy in restraint of interstate trade and commerce among the several States of the United States, and between the several States and the District of Columbia, and in the District

of Columbia, and that the Court perpetually enjoin the corporate defendants named herein, their officers and directors, and the individual defendants from observing in any respect the system of approving wholesalers and the system of licensing retailers and from forcing such wholesalers and retailers to observe such license agreements, the rules and regulations issued thereunder, and from entering into and executing similar agreements in the future.

5. That the plaintiff have such further, general, and different relief as the nature of the case may require and the Court may deem proper in the premises.

6. That the plaintiff recover the costs of this suit.

7. That pursuant to Section 5 of the Sherman Antitrust Act, writs of subpoena issue directed to such of the defendants as are not otherwise subject to service within the District, commanding them and each of them to appear herein and to answer each allegation contained in this complaint and to abide by and per-

20 form such acts, orders, and decrees as the Court may make in the premises.

UNITED STATES OF AMERICA,
SAMUEL S. ISSEKS,
Special Assistant to the Attorney General.
STANLEY E. DISNEY,
MONROE KARASIK,
IRVING B. GLICKFELD,
MARCUS A. HOLLABAUGH,
JOHN E. MCCRACKEN,
Special Attorneys,

ROBERT H. JACKSON,
Attorney General.
THURMAN ARNOLD,
Assistant Attorney General.

21 In United States District Court, Southern District of New York

[Title omitted.]

Answer of defendants, Soft-Lite Lens Co., Inc., et al.

The defendants, Soft-Lite Lens Company, Inc., Nathaniel Singer, Raymond G. Landis, and Morris Singer, answer the Complaint herein:

1. Admit the allegations in paragraph "1" of the Complaint, except that they deny that they or any of them have violated, are violating or intend to violate, jointly or severally, or other-

wise, in any manner; Sections 1 and 3 of the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

2. Deny each and every allegation contained in paragraph "2" of the Complaint, insofar as it concerns these defendants, and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that the defendant, Bausch & Lomb Optical Company has manufactured for the defendant, Soft-Lite Lens Company, Inc., certain lenses at the former's plant in Rochester, New York, and that the defendant, Soft-Lite Lens Company, Inc., has licensed retailers in the several States of the United States and in the District of Columbia, to deal in, handle, and sell lenses distributed by it, and that the defendant, Soft-Lite Lens Company, Inc., from its principal place of business within this District, has sold, shipped, and delivered said lenses in interstate trade and commerce
22 to customers living in the several States of the United States and in the District of Columbia, for resale by such customers.

3. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "3" of the Complaint, except that they admit that the defendant, Bausch & Lomb Optical Company, manufactures lenses and ophthalmic glass for lenses at its plant in Rochester, New York, and that such defendant maintains an office in the Borough of Manhattan, within the Southern District of New York.

4. Deny each and every allegation contained in paragraph "4" of the Complaint, except that they admit that the defendants, M. Herbert Eisenhart, Ben A. Ramaker and Joseph F. Taylor, have been associated with and have participated in the direction and management of the defendant, Bausch & Lomb Optical Company.

5. Deny each and every allegation contained in paragraph "6" of the Complaint, except that they admit that the following defendants are officers of the defendant, Soft-Lite Lens Company, Inc., each with his business address at New York, New York: Nathaniel Singer, President and Member of the Board of Directors; Raymond G. Landis, Vice President and Member of the Board of Directors, and Morris Singer, Chairman of the Board of Directors; and that each of said individual defendants has been and now is associated with or employed by the said defendant, Soft-Lite Lens Company, Inc., and has participated and now participates in the direction and management of the said corporate defendant in the official title or position and capacity above set forth.

6. Deny each and every allegation contained in paragraph "9" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that commencing with 1924, Bausch & Lomb manufactured for Optical Service Corporation, certain tinted ophthalmic glass and from that glass, tinted lenses, which said Corporation sold and distributed under the trade-mark of "Soft-Lite" lenses; and that said ophthalmic glass and said lenses made therefrom were manufactured by Bausch & Lomb, pursuant to special specifications of the Optical Service Corporation, and were manufactured exclusively for it.

7. Deny each and every allegation contained in paragraph "11" of the Complaint, insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that Soft-Lite Lens Company, Inc., since April 3, 1929, has continued to purchase certain lenses manufactured for it from defendant, Bausch & Lomb.

8. Deny each and every allegation contained in paragraphs "12" and "13" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants.

9. Deny each and every allegation in paragraph "14" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that Bausch & Lomb has manufactured exclusively for Soft-Lite Lens Company, Inc., "Soft-Lite" ophthalmic glass and "Soft-Lite" lenses.

10. Deny each and every allegation in paragraph "15" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that Bausch & Lomb manufactures "Soft-Lite" lenses exclusively for the defendant, Soft-Lite Lens Company, Inc.

11. Deny each and every allegation in paragraph "16" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that the defendant, Soft-Lite Lens Company, Inc., has communicated with Bausch & Lomb, from time to time, with regard to prices of "Soft-Lite" lenses.

12. Deny each and every allegation in paragraph "17" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that the defendant, Soft-Lite Lens Company, Inc., sells "Soft-Lite" lenses only to wholesalers, and that said defendant furnishes such wholesalers with lists of retailers licensed by it.

13. Deny each and every allegation in paragraph "18" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants.

14. Deny each and every allegation in paragraph "19" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that the defendant, Soft-Lite Lens Company, Inc., has licensed retailers to sell "Soft-Lite" lenses.

15. Admit the allegations of paragraph "20" of the Complaint, with the exception of the allegation reading: "thereby denying to the retailer licensee the right to handle, deal in, and sell tinted lenses similar in color to Soft-Lite lenses," which said allegation said defendants deny.

16. Deny each and every allegation in paragraph "21" of the Complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants, except that they admit that the retailer license provides that the retailer shall sell "Soft-Lite" lenses at the "prices prevailing in the locality."

17. Deny each and every allegation in paragraph "22" of the Complaint, insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants.

18. Deny each and every allegation in paragraph "23" of the Complaint, except that they admit that Soft-Lite Lens Company, Inc., sells "Soft-Lite" lenses only to wholesalers which it deems satisfactory customers, in the exercise of business judgment.

19. Deny each and every allegation in paragraph "24" of the Complaint.

20. Deny each and every allegation in paragraph "25" of the Complaint, insofar as it concerns these defendants and allege that

they are without knowledge or information sufficient to form a belief as to the truth thereof, insofar as it concerns other defendants.

26 Wherefore, these defendants pray that the Complaint herein be dismissed as against them and each of them, and that they be awarded their respective costs and disbursements.

LEHRICH AND LEHRICH,
Attorneys for Defendants above-named,
60 Wall Street, New York, New York.
By (Sgd) HYMAN D. LEHRICH, *Partner.*

27 In United States District Court, Southern District of New York

[Title omitted.]

Answer of Defendants, Bausch & Lomb Optical Co., et al.

The defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor, by their attorneys, Simpson Thacher & Bartlett, answering the complaint herein:

1. Admit the allegations in paragraph "1" of the complaint, except that they deny that they, or any of them, have violated, are violating, or intend to violate jointly or severally, or otherwise, in any manner, Sections 1 or 3 of the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

2. Deny each and every allegation in paragraph "2" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that the defendant Bausch & Lomb Optical Company has manufactured lenses and lens blanks at its plant in Rochester, New York, and has sold, shipped, and delivered lenses and lens blanks manufactured at its plant in Rochester, New

28 York, in interstate trade and commerce to purchasers living in the several States of the United States and in the District of Columbia, and admit that the defendant Bausch & Lomb Optical Company has maintained, and maintains, a branch office within the Southern District of New York, and admit that Soft-Lite Lens Company has obtained certain lenses and lens blanks from said defendant, and allege that they are without knowledge or information sufficient to form a belief as to whether the wholesalers purchasing lenses from Soft-Lite Lens Company or from Bausch & Lomb's affiliates resell such lenses to their wholesalers

and retailers located in States other than the State wherein said wholesaler-vendor is located.

3. Deny each and every allegation in paragraph "3" of the complaint, except that they admit that the defendant Bausch & Lomb Optical Company (sometimes hereinafter referred to as "B&L") is a corporation organized and existing by virtue of the laws of the State of New York, having its principal place of business in Rochester, New York; that B&L manufactures lenses and lens blanks and ophthalmic glass for lenses at its plant in Rochester, New York, and sells and distributes said lenses and lens blanks to wholesalers located in the several States of the United States and in the District of Columbia, and that B&L has a shipping office and carries on business in the Borough of Manhattan, within the Southern District of New York.

4. Deny each and every allegation in paragraph "4" of the complaint, except that they admit that the following defendants are officers of the defendant B&L, each with his business address at Rochester, New York; M. Herbert Eisenhart, President;
29 Ben A. Ramaker, Ophthalmic Sales Manager; Joseph F. Taylor, Vice President and Treasurer; and that each of the said individual defendants has been associated with or employed by the defendant B&L and has participated and is now associated with or employed by the defendant B&L and participates in the direction and management of the defendant B&L in the official title or position and capacity above set forth.

5. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs "5" and "10" of the complaint, except that they admit that the defendant Soft-Lite Lens Company, Inc. (hereinafter sometimes referred to as "Soft-Lite") is a corporation organized, existing, and incorporated under the laws of the State of New York, having an office and principal place of business in the Borough of Manhattan, State of New York, and within this District, and that Soft-Lite engages in the distribution of tinted lenses and lens blanks for use in spectacles and eyeglasses.

6. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "6" of the complaint.

7. Allege they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "7" and "8" of the complaint, except that they allege, upon information and belief, that, for a proper understanding of the issues involved in this action, the following definitions, according to common usage, should and do apply:

The term "rough lens blanks" designates single vision or multifocal lens blanks with neither side finished to usable form, whether or not the sides are clear.

30 The term "semifinished lens blanks" designates single vision or multifocal lens blanks with one side "finished" and and with the opposite side unfinished.

The term "lens blanks" designates "rough lens blanks" and "semifinished lens blanks" as hereinabove defined.

The term "lenses" designates single vision or multifocal lenses finished to usable form on both sides, whether or not the same are cut to shape and/or edged.

The terms "tinted lenses," "tinted rough lens blanks," "tinted semifinished lens blanks" and "tinted lens blanks" designate, respectively, "lenses," "rough lens blanks," "semifinished lens blanks" and "lens blanks" (as hereinabove defined) manufactured of colored or "tinted" glass.

8. Deny each and every allegation in paragraph "9" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that in 1924 and thereafter they manufactured for Optical Service Corporation certain tinted ophthalmic glass and from that glass tinted lenses and lens blanks and that B&L in or about 1926 declared its intention not to manufacture tinted ophthalmic glass or tinted lenses with specifications similar to that manufactured for Optical Service Corporation for any other customer.

31 9. Deny each and every allegation in paragraph "11" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that Soft-Lite has from time to time purchased tinted lenses and lens blanks from B&L.

10. Deny each and every allegation in paragraphs "12" and "13" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants.

11. Deny each and every allegation in paragraph "14" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that B&L has manufactured unpatented tinted lenses and lens blanks and unpatented tinted ophthal-

mic glass from which said lenses are made in accordance with the specifications of Soft-Lite exclusively for Soft-Lite.

12. Deny each and every allegation in paragraph "15" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that B&L sells its entire output of Soft-Lite lenses and lens blanks to Soft-Lite.

13. Deny each and every allegation in paragraph "16" of
32 the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficent to form a belief as to the truth thereof insofar as it concerns other defendants, except that they admit that the defendant B&L from time to time has conferred and communicated with Soft-Lite.

14. Deny each and every allegation in paragraphs "17" to "22," inclusive, of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants.

15. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "23" of the complaint.

16. Deny each and every allegation in paragraphs "24" and "25" of the complaint insofar as it concerns these defendants and allege that they are without knowledge or information sufficient to form a belief as to the truth thereof insofar as it concerns other defendants, and allege that they are without knowledge or information sufficient to form a belief as to whether the majority of wholesalers and retailers who purchase Soft-Lite lenses purchase lenses that move in interstate trade and commerce or whether the majority of such wholesalers, including all of such
33 wholesalers located in the Southern District of New York, resell Soft-Lite lenses in interstate trade and commerce.

Wherefore these defendants pray that the complaint herein be dismissed as against them and each of them and that they be awarded their respective costs and disbursements.

SIMPSON, THACHER & BARTLETT,
Attorneys for Defendants above named,
120 Broadway, New York, N. Y.
By WHITNEY NORTH SEYMOUR,
A Partner.

[Copy received Feb. 10, 1941. Samuel S. Isseks, Spec. Asst. to the Atty. General, by Jane Williams.]

35 United States District Court, Southern District of New York

Civ. 10–393

UNITED STATES OF AMERICA *vs.* BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, R. G. LANDIS, AND MORRIS SINGER, DEFENDANTS

Appearances: Samuel S. Isseks, Esq., Special Assistant to the Attorney General; Irving B. Glickfeld, Esq., Special Attorney; John E. McCracken, Esq., Special Attorney; John S. James, Esq., Special Attorney; for the Government. Simpson, Thatcher & Bartlett, Esqs., Attorneys for Defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker and Joseph F. Taylor; Whitney N. Seymour, Esq. and Francis X. Fallon, Jr., Esq., of Counsel. Lehrich & Lehrich, Esqs., Attorneys for Defendants Soft-Lite Lens Company, Inc., Nathaniel Singer, R. G. Landis and Morris Singer; Henry Lehrich, Esq., Benjamin S. Kirsch, Esq. and Hyman D. Lehrich, Esq. of Counsel.

Argued November 10, 1941.

Opinion

May 27, 1942

35A RIFKIND, D. J.

This is a civil action by the United States under the provisions of the Sherman Anti-Trust Act (15 U. S. C. A. § 1 et seq.). The two corporate defendants are Bausch & Lomb Optical Co., a manufacturer of ophthalmic goods and Soft-Lite Lens Co., Inc., a distributor of unpatented, pink tinted lenses, under the trademark "Soft-Lite," for use in spectacles and eye glasses. The individual defendants are officers of one or the other corporation.

The complaint charges the defendants with violations of sections 1 and 3 of the Sherman Anti-Trust Act by unlawfully contracting, combining and conspiring to restrain interstate trade and commerce in tinted lenses and, more particularly, by contracting, combining and conspiring: "(a) to designate and select according to certain arbitrary rules and regulations, wholesalers and retailers to handle, deal in, and sell certain tinted lenses known as Soft-Lite lenses; (b) to sell such tinted lenses only to

such designated and selected wholesalers and retailers; (c) to restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected; (d) to force such wholesalers and retailers to observe certaing arbitrary and unreasonable prices in reselling such tinted lenses; and (e) to limit the sale and distribution in interstate trade and commerce of tinted lenses similar to Soft-Lite lenses."

The complaint further charges that the defendants combined and conspired to establish and maintain a closely regulated scheme of manufacture and distribution by means of which the defendants would control completely all phases of the marketing of these unpatented tinted lenses, including the selection and designation of wholesalers and retailers of such lenses and the fixing and maintenance of minimum retail prices of such lenses; and that the object of this combination and conspiracy was effectively carried out by an exclusive manufacturing arrangement between Bausch & Lomb and Soft-Lite, by employing corporations affiliated with Bausch & Lomb to distribute approximately two-thirds of all Soft-Lite lenses, by price conferences and agreements, by a system of selecting wholesalers and licensing retailers and by requiring retailers to resell the lenses at the price prevailing in their respective localities.

As a result of the conspiracy and its effectuation, dealers who refuse to abide by the control exercised by defendants have been denied the right to deal in Soft-Lite lenses and consumers have been compelled to pay arbitrary and noncompetitive prices.

The relief prayed for includes injunctions against the unlawful practices of the defendants, cancellation of the manufacturing agreement between Bosch & Lomb and Soft-Lite, cancellation and injunctions against the continuance of the distribution arrangements and licenses between Soft-Lite and its wholesalers an retailers.

The answers admit that Soft-Lite lenses move in interstate commerce, that they are manufactured by Bausch & Lomb
36 exclusively for Soft-Lite, that defendant Soft-Lite licenses retailers to deal in Soft-Lite lenses. The answers deny substantially all the other material allegations and deny the violation of the Sherman Anti-Trust Act.

For several years prior to 1919, Morris Singer was purveying pink tinted lenses, for use in eyeglasses, through several retail shops operated by him in the City of New York. These lenses were marketed under the trademark "Soft-Lite" owned by him. Soft-Lite lenses were ground for Morris Singer by several manufacturers out of pink tinted glass imported by him from France.

In 1919 Morris Singer and Nathaniel Singer, his son, formed Optical Service Corporation to engage in the wholesale distribution of Soft-Lite lenses. The name of Optical Service Corporation was in 1929 changed to Soft-Lite Lens Co., Inc., and it will hereinafter be so identified.

Tinted lenses had been sold in the market as far back as 1908. Pink tinted lenses, however, were apparently introduced into the American market by Morris Singer. They won public favor slowly and in 1924 Soft-Lite was still doing a very small business. At that time Nathaniel Singer estimated that the company's sales for the year would amount to about fifty thousand pairs.

On June 11, 1924, Bausch & Lomb entered into an arrangement to grind pink tinted lenses for Soft-Lite out of glass imported and provided by the latter. In connection with this arrangement and at the time it was made Bausch & Lomb was supplied by Soft-Lite with a list of its customers to whom Bausch & Lomb referred in an office memorandum as jobbers and retail licensees. Bausch & Lomb agreed that any orders for pink tinted lenses which it might receive it would transmit to Soft-Lite.

Shortly thereafter, in August 1924, a change occurred in the relationship between the two companies. Bausch & Lomb became not only the grinder of Soft-Lite lenses but the exclusive manufacturer of the pink tinted glass from which the lenses were ground. Furthermore, it was understood that Bausch & Lomb would manufacture pink tinted glass only for Soft-Lite and that it would not compete with Soft-Lite in the sale of pink tinted lenses.

The parties have given this arrangement a more precise construction from time to time. Thus, on September 13, 1926, Bausch & Lomb wrote to Soft-Lite as follows:

"Since the very beginning of our relations with you, in connection with this transaction, it has been understood that we would safeguard your interests in every way and it has never been our intention to make competition for you by either marketing a tinted lens of our own or producing similar tinted glass for other manufacturers and it is our intention to abide by this understanding.

"On the other hand, however, it is difficult to foresee the progress of science in producing glass possessing better properties
37 than is obtainable at the present time and in that event we feel certain that you would not in any way desire to impede our progress in that direction.

"We hope that this may be sufficient guarantee to you that we do not wish to do anything that would look like competition in connection with the Soft-Lite and we naturally expect that your efforts in the sale of same will be continued as at present for an

indefinite period unless by consent of both parties concerned a different arrangement is agreed upon.

Yours very truly,

BAUSCH & LOMB OPTICAL COMPANY.

"P. S. Tinted lenses such as Crookes, Fieusal, Smoke, Amber, etc. which we are now manufacturing it is understood will not come under the above arrangement."

This construction of the understanding of the parties was accepted by Soft-Lite.

The character of the basic relationship between the parties again came up for review in 1932 in connection with a patent application by Bausch & Lomb on Nokrome lenses. On July 6, 1932, Bausch & Lomb wrote to Soft-Lite, in part as follows:

"Insofar as the marketing of product manufactured under this patent involves the use of Soft-Lite glass as such, we are willing to grant you the exclusive distribution under the same general conditions as we have agreed to in the letter written by our company to you under date of September 13, 1926."

Except for a change with respect to second quality lenses, the arrangements embraced in these communications have, in substance, governed the relation between the two corporations to this day. With respect to second quality lenses it was provided sometime between 1924 and 1935 that Soft-Lite would no longer be obliged to accept them; that Bausch & Lomb would not sell them in the United States but only abroad, in countries in which Soft-Lite had no offices, and at prices agreed to by both corporations.

These arrangements were developed through arm's length negotiations. Soft-Lite's object was to obtain from a highly regarded domestic source a product of uniformly good quality. Bausch & Lomb's object was to secure a prospectively increasing outlet for its manufactures.

These objects have been attained. The distribution of Soft-Lite lenses has grown rapidly. In 1938 Soft-Lite sold 444,171 pairs for $807,000; in 1939, 518,129 pairs for $910,000; in 1940, 563,113 pairs for $987,000.

Others have entered the pink tinted lens field. The most prominent are American Optical Company, Titmus Optical Company, Shuron Optical Company and Continental Optical Company.

The aggregate sales of pink tinted lenses by the companies
38 mentioned, including Soft-Lite, are as follows: 1938, 1,150,523 pairs for $1,598,179; 1939, 1,406,713½ pairs for $1,887,568; 1940, 1,433,583½ pairs for $1,939,502.

Pink tinted glass for lenses has been manufactured not only by Bausch & Lomb but also by Pittsburgh Plate Glass Company,

which supplied the companies above-mentioned other than Soft-Lite, and by L. J. House Convex Glass Company.

Throughout the period mentioned there has been competition between untinted and tinted lenses, as well as in the various tints of lenses and among the distributors of pink tinted lenses.

Soft-Lite is engaged exclusively in selling. It does no manufacturing of any kind. The lenses it markets are purchased exclusively from Bausch & Lomb. Soft-Lite sells its lenses only to designated wholesalers. However, it promotes the sale of its lenses by appealing directly to retailers for patronage of its trade-marked article.

Wholesalers designated by Soft-Lite to deal in Soft-Lite lenses may resell them only to retailers "licensed" by Soft-Lite. The form of "license" has undergone several changes.

Until 1927, there was no written form of license although retailers who dealt in Soft-Lite lenses were called licensees by Soft-Lite. Sometime in 1927, Soft-Lite established the practice of having the retailer, upon placing his first order with the wholesaler for Soft-Lite lenses, subscribe to a paper entitled, "Signed application for a Soft-Lite Licensee Privilege." The application was subject to acceptance by Soft-Lite. Therein the applicant declared that it was "a recognized high grade ethical optical concern," that it was cognizant of "the standards and principles upon which licenses for Soft-Lite are granted" and that it "subscribes to these principles." Between 1928 and 1933, a slightly revised form was employed which did not differ materially from the preceding one. Both forms of application called for endorsement or recommendation of the retailer by one of the designated wholesalers or by a Soft-Lite representative. It did not require the approval of Bausch & Lomb.

In May 1933, was devised a plan of distribution which has, with one change, prevailed to the present time. Two classes of retail licenses were established, one called a "stock license" issued to retailers who were equipped to perform certain finishing operations upon lenses; the other called a "prescription license" issued to retailers not so equipped.[1] There were different requirements as to minimum purchases and different price discounts applicable to the two licenses.

39 The license became a bilateral agreement between the retailer and Soft-Lite. In part it provided:

1. Licensor hereby grants licensee a revocable, nonexclusive and nontransferable license to purchase said Soft-Lite lenses and lens

[1] The classification of retailers into stock retailers and prescription retailers is one commonly recognized in the trade with varying qualifying characteristics.

blanks from a licensee Soft-Lite Distributor or Class "A" Wholesale Licensee and to resell said lenses at prices prevailing in the locality in which licensee conducts his practice or business.

2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, agreeing not to sell or deal in any lens similar in tint, color, or shade to Soft-Lite lenses. Said Soft-Lite Lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer. * * *

3. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days * * *

In February 1939, paragraph 2 of the license was changed to read thus:

2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses; it being understood that the promotion of the sale of other lenses of a similar color, or the substitution of other lenses for Soft-Lite lenses, is detrimental to the good name and reputation of Soft-Lite lenses and may adversely affect the prestige thereof. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor and only to the patient or consumer.

This change was the result of a cease and desist order issued by the Federal Trade Commission.

Upon the issuance of a license to a retailer the designated wholesalers were notified that they were at liberty to sell to him.

Bausch & Lomb also manufactured patented lenses with specified characteristics under the names Orthogon and Panoptik. These lenses were manufactured both in pink tinted glass and other glass. A number of reciprocal arrangements prevailed between the two corporations arising out of this overlapping. Thus Orthogon licensees of Bausch & Lomb were privileged to purchase Orthogon Soft-Lites. Soft-Lite stock licensees were privileged to buy uncut Orthogon Soft-Lites. Orthogon "Franchise Dealers" were automatically listed as Soft-Lite prescription licensees. Panoptik licensees could buy Panoptik Soft-Lites. Soft-Lite licensees could not deal in Panoptik bifocals unless licensed by Panoptik.

Soft-Lites are distributed by seven thousand to eight thousand licensed retailers in the United States. The total number of oculists and optometrists in the United States is thirty thousand, of whom about one-half are active purchasers of lenses.

There is no doubt that Soft-Lite exerted every effort to keep the stream of its lenses well within defined channels which it estab-

lished, reaching from the source of manufacture to the ultimate consumer. It selected only those wholesalers who were willing to cooperate with its policy. It licensed only those retailers who agreed to and observed its policy.

Excluded from its wholesale customers were those who did business with "unethical retailers"; wholesale branches of the American Optical Company; and wholesalers whose volume was relatively small. Excluded from the retailer list were those who failed to maintain the price prevailing in the locality; "indulged in installment advertising where prices are quoted in any form"; maintained their establishments in a department store or jewelry house; did not conduct their business or practice in a "reputable and ethical manner."

In its advertising Soft-Lite stressed that it was protecting its licensed retailers from the competition of unethical practitioners and price cutters.

Soft-Lite's policy was enforced: by scrutiny before the retailer was licensed; by surveillance through Soft-Lite's salesmen and by cancellation of the retailer's license if he failed to abide by Soft-Lite's policy. Upon cancellation, wholesalers were notified in writing that the retailer was no longer entitled to receive Soft-Lite lenses. Wholesalers observed this exclusion.

As an additional device for the enforcement of its policy, and especially to create the appearance of enforceability, Soft-Lite used a "protection certificate." Each pair of Soft-Lite lenses was accompanied by a numbered certificate which vouched for the genuineness of the lenses and disclosed, by means of the number, the wholesale source of the lens. The testimony is to the effect that the protection certificate was but rarely used to trace the wholesale source of lenses found in the hands of unlicensed retailers. It is clear, however, that it could be used for that purpose and that wholesalers were informed that it was intended for that purpose.

It is undisputed that Soft-Lite designated to the wholesalers that prices to be received by them from the retailers. This was done by means of published price lists. These lists were made available to retailers as well as to wholesalers and the retailers were thus informed of the prices at which they could expect to purchase Soft-Lite lenses from the wholesalers. Nathaniel Singer, President of Soft-Lite, testified that these prices were intended only as suggestions. If so, they were suggestions which the wholesalers regarded as obligatory. Both Soft-Lite and the wholesalers understood that material deviation would result in the discontinuance of business. Soft-Lite's advertising, price lists and conduct, as well as Nathaniel Singer's speeches at trade meetings, confirmed this understanding.

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There is much deeper conflict in the testimony as to whether Soft-Lite fixed the price to be charged by retailers to consumers. It is admitted that such prices were fixed on "goggles" (glasses which filter out some light but otherwise leave vision unaffected). Defendants contend that this was a solitary instance, long since abandoned, and insignificant in volume. I find that Soft-Lite did not establish a uniform retailer-consumer price on Soft-Lite lenses. That does not mean that consumer prices were freely allowed to find their competitive levels. A number of regulatory forces were exerted by Soft-Lite and its wholesalers which operated on consumer prices.

The first of these was the retailers' agreement to sell at "prices prevailing in the locality." The second was Soft-Lite's insistence that its lenses be sold at a premium over comparable untinted lenses. Departure from these two standards was punished by revocation of license. Restoration followed only upon adequate assurance of compliant behavior in the future. By these means, Soft-Lite was assuring the trade that it was protecting the retailers' legitimate profit. Soft-Lite's salesmen and representatives were instructed to and did observe whether Soft-Lite policies were carried out by wholesalers and retailers. Where suspicion was aroused by the complaint of one retailer against another, "shopping" was engaged in by agents of Soft-Lite to ascertain whether there was noncompliance with the price regulations.

Was the Soft-Lite system of distribution independently maintained or did Bausch & Lomb play a role in maintaining it? This question is complicated by the contention of the plaintiff that the Bausch & Lomb affiliates were in fact one with Bausch & Lomb, or at least instrumentalities of Bausch & Lomb so that their acts may be ascribed to it. The affiliates are six wholesale distributors of ophthalmic goods. Over a period of years, after 1924, Bausch & Lomb acquired the controlling stock interest in each of them. The six wholesale houses operate, in the aggregate, 164 branches. They constitute, by far, the largest outlet for Soft-Lite lenses, accounting for sixty percent of the sales.

It was stipulated, for purposes of this trial only and for no other purpose and subject to conditions stated in the stipulation, that "Bausch & Lomb, through its ownership of a majority of the outstanding voting stock of each said wholesale companies, has power to coordinate and control the sales and pricing policies of said wholesale companies."

Whatever may be the legal relationship between Bausch & Lomb and its affiliates, the business relationship is quite clear. Manifestly, Bausch & Lomb is vitally interested in the price which Soft-Lite charges to wholesalers since the Bausch & Lomb affiliates con-

stitute the most prominent group among Soft-Lite's whole-
42 sale customers. It is equally clear that Bausch & Lomb is concerned with the price level of the lens to the consumer. The logic of its concern was well expressed in 1925 by Sterling, an officer of Bausch & Lomb, in an interoffice memorandum:

"The economic justification for the existence of Soft-Lite in the picture has always been that they start with high retail prices and from this develop a price schedule that leaves an attractive profit at every link in the chain of distribution, including the very sizeable mark-up in price between our sales price to Soft-Lite at the factory and our purchase price paid to Soft-Lite at distribution. If the retailers are not able to obtain the high prices listed, this becomes a matter of vital concern to us * * *"

I do not accept this as proof of the existence of a "list" of prices to be charged by retailers, as Sterling's explanation of the use of that word is adequate. I do take it as evidence that Bausch & Lomb was consciously aware of the business logic of its relations with Soft-Lite.

We come, therefore, to the next question, which is, whether this concern of Bausch & Lomb with prices charged to wholesalers, retailers and consumers was translated into agreement with Soft-Lite or in action taken in concert with Soft-Lite.

The evidence clearly supports the conclusion that price was frequently the subject of discussion between Soft-Lite and Bausch & Lomb. These discussions related to every segment of the price structure. Whenever Bausch & Lomb reduced its price to Soft-Lite it insisted that the reduction be transmitted down along the chain of distribution; and in every instance but one Soft-Lite complied. It is equally clear that the affiliated corporations charged retailers the price designated for that purpose by Soft-Lite; that they cooperated in weeding out so-called undesirable retailers; and that some of them participated in discussions with Soft-Lite concerning the rather complicated Soft-Lite price schedules before they were published or revised.

It is equally clear from the evidence that prior to the acquisition of control by Bausch & Lomb the wholesalers, now identified as affiliates, were similarly helpful and, indeed, that nonaffiliated wholesalers were likewise cooperative in the effectuation of Soft-Lite's policy.

The relationship between Bausch & Lomb and Soft-Lite was a cordial one. There were many points of cooperative contact. Lists of wholesale customers were exchanged. "Tips" with respect to the quality of dealers were given by one to the other. When there was doubt about a customer there was discussion be-

tween Bausch & Lomb and Soft-Lite and an exchange of experience in relation to that customer.

Likewise with respect to a number of items distributed in the optical trade for advertising purposes rather than for profit there was very considerable cooperation, including agreement on price. This applied to cleaning cloths, a "dispense box," or receptacle for cleaning cloths, and lens cabinets.

43 Bausch & Lomb scrupulously refrained from competing with Soft-Lite in pink tinted lenses. In 1936, however, Bausch & Lomb, over Soft-Lite's protest, introduced "Ray Ban," a green tinted lens, which it marketed directly without the aid of Soft-Lite. Similarly, Soft-Lite sold its lenses to wholesalers who were in active competition with the affiliated wholesalers; and the affiliated wholesalers, as well as the nonaffiliated wholesalers, sold lenses which were competitive with Soft-Lites.

In an effort to tie Bausch & Lomb more securely to Soft-Lite's system of distribution the plaintiff offered the testimony of one Wahlgren, whose credibility the defendants have vigorously attacked. While there is a wide divergence between Wahlgren's version of the origin of the 1924 agreement and Nathaniel Singer's, there is no serious conflict with respect to the truly material items. I do not accept the contention that in 1924 Bausch & Lomb and Soft-Lite envisioned in detail the 1933 distribution system. On the other hand, the logic of Soft-Lite's status in the lens business made the discussion of price between Bausch & Lomb and Soft-Lite imperative. And this was true even before Bausch & Lomb had acquired affiliates who were Soft-Lite's chief customers. Soft-Lite constituted an additional link in the chain of distribution inserted between the manufacturer and the wholesaler. If its profits were not to be obtained at the expense of the manufacturer or of the manufacturer's customers, it must be derived from the higher price charged to the consumer. A premium price to the consumer above untinted lenses was, therefore, the sine qua non of Soft-Lite's existence, and Soft-Lite's ability to market its lenses at such a premium price was the only justification of the exclusive agreements made with it by Bausch & Lomb.

The evidence does not justify an inference that in 1924 or at any time thereafter Bausch & Lomb undertook to assist Soft-Lite to attain such a goal, except as the exclusive manufacturing agreement itself may be so regarded. The inference is, however, inescapable that before Bausch & Lomb granted Soft-Lite an exclusive manufacturing arrangement it was satisfied that Soft-Lite would so market the product as to justify that arrangement.

Nathaniel Singer (President of Soft-Lite Lens Company) testified that the necessary price conditions were achieved by superior salesmanship, resourcefulness, advertising and by building a

"halo" about Soft-Lite lenses. Undoubtedly these contributed, I find, however, that the "halo" was no more than the glitter of high price, artificially maintained by a framework of agreements in restraint of trade.

These were designed to confer upon Soft-Lite the power to control the price of its lenses at every stage of distribution down to consumer. They were effective instruments for the accomplishment of that purpose and were successfully used to attain it.

The mischief of these agreements becomes more conspicuous when examined in the light of the established trade
44 practice that the retail purveyor of the lenses is frequently the one who also "prescribes" for the patient-customer. Into his quasiprofessional judgment is thus introduced the knowledge that he can prescribe a lens whereon his profit is greater; and this temptation is more easily yielded to when there is security against competitive comparison. That security Soft-Lite, by its advertising, salesmanship and by public addresses at trade meetings undertook to provide for those who dealt in its products. The paucity of complaints and the relative rarity of punitive action against violators of the ethics preached by Soft-Lite attest the success of its efforts.

The principle has long been established that the Sherman Act condemns an agreement between a distributor and a group of wholesalers to boycott all retailers not approved by the distributor and to charge a uniform price to all retailers who are approved.

Dr. Miles Medical Co. v. Park & Sons Co., 1911, 220 U. S. 373;
U. S. v. A. Schrader's Son, Inc., 1920, 252 U. S. 85;
Federal Trade Commission v. Beech-Nut Packing Company, 1922, 257 U. S. 441;
Ethyl Gasoline Corp. v. U. S., 1940, 309 U. S. 436;
Interstate Circuit, Inc. v. U. S., 1939, 306 U. S. 308;
Eastern States Retail Lumber Dealers Association v. U. S., 1914, 234 U. S. 600;
Binderup v. Pathe Exchange, Inc., 1923, 263 U. S. 291;
Anderson v. Shipowners Association, 1926, 272 U. S. 359;
Paramount Famous Corp. v. U. S., 1930, 282 U. S. 30;
U. S. v. First National Pictures, Inc., 1930, 282 U. S. 44.

Obviously, trade is restrained by the distribution system of Soft-Lite. Nor need we be concerned to inquire whether the restraint is unreasonable, Standard Oil Co. of New Jersey v. U. S., 1911, 221 U. S. 1, since price fixing is illegal per se.

U. S. v. Trenton Potteries Co., 1927, 273 U. S. 392, 397;
U. S. v. Socony-Vacuum Oil Co., Inc., 1940, 310 U. S. 150.

In the latter case the court said (at page 218):

"Thus for over forty years this Court has consistently and without deviation adhered to the principle that price-fixing agreements

are unlawful per se under the Sherman Act and that no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense. And we reaffirmed that well-established rule in clear and unequivocal terms in Ethyl Gasoline Corp. v. United States, 309 U. S. 436, 458, where we said:

"'Agreements for price maintenance of articles moving in interstate commerce are, without more, unreasonable restraints within the meaning of the Sherman Act because they eliminate competition, United States v. Trenton Potteries Co., 273 U. S. 392, and agreements which create potential power for such price maintenance exhibited by its actual exertion for that purpose are in themselves unlawful restraints within the meaning of the Sherman Act, * * *'"

It does not matter whether the market in the commodity involved is or is not dominated by the parties to the agreement.

U. S. v. Socony-Vacuum Oil Co., Inc., supra, at page 225;

Apex Hosiery Co. v. Leader, 1940, 310 U. S. 469, 485.

It matters not that the price is not uniform.

U. S. v. Socony-Vacuum Oil Co., Inc., supra, at page 222.

And these authorities have established that the law is not nullified by the circumstance that under the operation of the agreements the sale of the commodity has increased and competition by those outside the conspiracy stimulated.

U. S. v. Patten, 1913, 226 U. S. 525.

The agreement is not saved by the circumstance that as part thereof some very desirable ends are served, such as the exclusion of dishonest merchants from access to the commodity.

Ethyl Gasoline Corp. v. U. S., supra;

U. S. v. The Masonite Corporation, — U. S. —, decided May 11, 1942.

True, there is no written agreement here between the distributor and the wholesalers as there was in Dr. Miles Medical Co. v. Park & Son's Co., supra. That, however, does not immunize the distribution system devised by Soft-Lite. Neither was there a written agreement in Federal Trade Commission v. Beech-Nut Packing Co., supra, but that did not avail. The agreement is implicit in the operation of the system. The living reality of uniform prices from wholesalers to retailers, corresponding to the written instructions of the distributor, of wholesalers' refusal to sell to unlicensed retailers, of surveillance of wholesalers by means of protection certificates and over retailers by "shopping," compel the conclusion that between the wholesalers and the distributor there was agreement or at least acquiescence in a program of concerted action. Surely,

it would not mitigate the offense if adherence to the plan were involuntarily exacted.

Loewe v. Lawlor, 1908, 208 U. S. 274, 293;

Eastern States Retail Lumber Dealers' Assn. v. U. S., 1914, 234 U. S. 600, 611.

Defendants call the favored retailers "licensees." When admitted to the privilege of purchasing Soft-Lite lenses they receive from Soft-Lite a document called a license. But Soft-Lite has no privilege to confer. The right to buy Soft-Lites from those who own them is not within its gift. The trademark does not give Soft-Lite any such power to project its control over the trademarked article. This has been held with respect to a patent.

46 Ethyl Gasoline Corp. v. U. S., 1940, 309 U. S. 436. A fortiori it applies to a trade mark. Without the boycott maintained by it, in concert with the wholesalers, against unlicensed retailers, Soft-Lite's attempt to exercise this pretended power would have been a mere theatrical gesture. The force which transferred the license from the stage to the market place was the force of the boycott. And it is this very exertion of force by agreement or combination against the freedom of trade which is outlawed by the Sherman Act.

In defending this system of controlled distribution defendants rely chiefly on U. S. v. Colgate and Co., 1919, 250 U. S. 300. That case affirmed the right of a manufacturer or trader to choose his customers and to define in advance the conditions upon which trade with them woud be conducted. The limited significance of that case has been stated by the Supreme Court itself in the Beech-Nut case, 257 U. S. 441, 452, where the court said:

"In the subsequent case of United States v. Schrader's Son, Inc., 252 U. S. 85, this court had occasion to deal with a case under the Criminal Appeals Act, wherein there was a charge that a manufacturer sold to manufacturers in several States under an agreement to observe certain resale prices fixed by the vendor—which we allow to be a violation of the Sherman Anti-Trust Act. In referring to the Colgate Case we said: 'The court below misapprehended the meaning and effect of the opinion and judgment in that cause.' We had no intention to overrule or modify the doctrine of Dr. Miles Medical Co. v. Park & Sons Co., where the effort was to destroy the dealers' independent discretion through restrictive agreements. Under the interpretation adopted by the trial court and necessarily accepted by us, the indictment failed to charge that Colgate & Company made agreements, either express or implied, which undertook to obligate vendees to observe specified resale prices; and it was treated 'as alleging only recognition of the manufacturer's undoubted right to specify resale

prices and refuse to deal with anyone who failed to maintain the same'." * * *

"By these decisions it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade."

47 Nor can there be any doubt that the written agreement or licenses between Soft-Lite and the retailers are violative of Section 1 of the Sherman Act. It is sufficient to point to the promise exacted from the retailer to sell at prices "prevailing in the locality." The only defense which can be suggested is that the retail trade is intrastate in character. But the defense is insufficient. [As has already been pointed out, the elimination of retail competition and the maintenance of a high retail price was the keystone of the arch of controlled distribution erected by Soft-Lite.] It is a crucial part of a system involving interstate commerce.

Montague & Co. v. Lowry, 1904, 193 U. S. 38, 45. There the court adverted to such a defense in the following language:

"It is urged that the sale of unset tiles, provided for in the seventh section of the by-laws, is a transaction wholly within the State of California and is not in any event a violation of the act of Congress which applies only to commerce between the States. The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. The whole agreement is to be construed as one piece, in which the manufacturers are parties as well as the San Francisco dealers, and the refusal to sell on the part of the manufacturers is connected with and a part of the scheme which includes the enhancement of the price of the unset tiles by the San Francisco dealers. The whole thing is so bound together that when looked at as a whole the sale of unset tiles ceases to be a mere transaction in the State of California, and becomes a part of a purpose which, when carried out, amounts to and is a contract or combination in restraint of interstate trade or commerce."

See also Apex Hosiery Co. v. Leader, 1940, 310 U. S. 469, 484.

It is suggested that only controls of the price structure as between competitive business units are violative of the law, whereas the controls in the case at bar are not between competitive units.

But the suggestion is not admissible. In U. S. v. Patten, 1913, 226 U. S. 525, 541, the court said:

"Section 1 of the act, upon which the counts are founded, is not confined to voluntary restraints, as where persons engaged in interstate trade or commerce agree to suppress competition among themselves, but includes as well involuntary restraints, as where persons not so engaged conspire to compel action by others, or to create artificial conditions, which necessarily impede or bur-
48 den the due course of such trade or commerce or restrict the common liberty to engage therein."

See also Patterson v. U. S., C. C. A. 6, 1915, 222 Fed. 599, 618, cert. den., 238 U. S. 635.

The suggestion cannot be accepted for another reason. Here we have in fact an agreement among the wholesalers through Soft-Lite and an agreement among the retailers through Soft-Lite.

Interstate Circuit, Inc. v. U. S., 1939, 306 U. S. 208;

U. S. v. The Masonite Corporation, — U. S. —, decided May 11, 1942.

Each participant, of course, understands that he is part of a larger system.

In the light of the doctrine so clearly announced by the Supreme Court it cannot be doubted that the distribution system for Soft-Lite lenses defies both the letter and spirit of Section 1 of the Sherman Act.

The plaintiff urges that the relief to be granted herein should not be limited to striking down the system of distribution from Soft-Lite through wholesalers to retailers and consumers. It contends that the manufacturing arrangement between Bausch & Lomb and Soft-Lite should likewise be condemned. Two arguments are advanced in support of this contention: 1. That the arrangement is violative of law, independently of the distribution system; 2. that it is contaminated by the vice of the distribution system, of which it forms a part.

Is the manufacturing arrangement alone condemned by the Sherman Act? There is no lawyer-drawn instrument which in precise terms defines the arrangement under consideration. We have a Bausch & Lomb memorandum of July 30, 1924, containing the words:

"It is understood that we make the above Soft-Lite glass for them only. It is also understood that this arrangement is made between us and the Optical Service Corporation of New York only."

We have the correspondence to which reference has already been made in the statement of facts. And, finally, we have the course

of conduct of the parties over a period of sixteen years. In actual operation the understanding of the parties was that Bausch & Lomb was the exclusive manufacturer of pink tinted glass and grinder of Soft-Lite lenses therefrom and that Bausch & Lomb abstained from marketing a pink tinted lens or manufacturing pink tinted glass for other lens grinders.

In a lay sense, the withdrawal of Bausch & Lomb from competition with Soft-Lite in the distribution of pink tinted lenses and its refusal to sell pink tinted glass to competitors of Soft-Lite pursuant to arrangement, is a restraint of trade. But certainly ever since Standard Oil Co. of New Jersey v. U. S., 1911, 221 U. S. 1, it has been established that the lay conception was inadequate to express the legal conception and that the law was violated only by unreasonable restraints.

49 In determining whether a restraint is unreasonable the guidance of the classic opinion in U. S. v. Addyston Pipe & Steel Co., C. C. A. 6th, 1898, 85 Fed. 271, affirmed 175 U. S. 211, is still available. It is too well known to require quotation here. The standards there set forth appear in substantially similar form in the Restatement of the Law of Contracts of the American Law Institute, §§ 515, 516. § 516 reads as follows:

"§ 516. Instances of Reasonable Restraints.

"The following bargains do not impose unreasonable restraint of trade unless effecting, or forming part of a plan to effect, a monopoly: (a) A bargain by the transferor of property or of a business not to compete with the buyer in such a way as to injure the value of the property or the business sold;

"(b) A bargain by the buyer or lessee of property or of a business not to use it in competition with or to the injury of the seller or lessor;

"(c) A bargain to enter into partnership with an actual or possible competitor;

"(d) A bargain by a partner not to interfere by competition or otherwise with the business of the partnership while it continues, or subject to reasonable limitations after his retirement;

"(e) A bargain to deal exclusively with another;

"(f) A bargain by an assistant, servant, or agent not to compete with his employer, or principal, during the term of the employment or agency, or thereafter, within such territory and during such time as may be reasonably necessary for the protection of the employer or principal, without imposing undue hardship on the employee or agent."

In the Addyston case the Circuit Court quoted with approval from Horner v. Graves, 7 Bing. 735, the following (p. 282):

"We do not see how a better test can be applied to the question whether this is or not a reasonable restraint of trade than by con-

sidering whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public. * * * " And the court continued,

"This very statement of the rule implies that the contract must be one in which there is a main purpose, to which the covenant in restraint of trade is merely ancillary."

In the case at bar the main purpose of the contract is to provide a source of supply for Soft-Lite. The restraining covenant is for the protection of the purchaser who is spending large sums to develop his good will and enlarge the public patronage of a relatively new article of commerce. The arrangement, though not a partnership in legal form, is functionally a joint enterprise in which one will produce and the other market the commodity.

U. S. v. Addyston, supra, at page 281.

It is clearly a "bargain to deal exclusively with another," Restatement, supra, § 516.

It is not necessary to find and I do not find that Soft-Lite's specifications for the glass constituted a secret formula for the protection of which a restraining covenant would be proper. There is nothing contrary to public policy in the arrangement. Nothing in the evidence indicates that Bausch & Lomb enjoyed a monopoly in the manufacture of glass for lenses, whether pink or otherwise. On the contrary, the evidence is clear that other manufacturers of lenses have had access to pink glass from other sources and that the success of Soft-Lite has stimulated emulation and competition.

See Federal Trade Commission v. Raymond Bros.—Clark Co., 1924, 263 U. S. 565.

I conclude that the exclusive arrangement between Bausch & Lomb and Soft-Lite taken independently of the distribution system is not violative of the Sherman Act.

Should that arrangement nevertheless be stricken down as part of the unlawful distribution system?

U. S. v. Patten, 1913, 226 U. S. 525;

U. S. v. Reading Co., 1912, 226 U. S. 324;

Swift & Co. v. U S., 1903, 196 U. S. 375.

It is urged that this basic agreement resulted in the active cooperation of Bausch & Lomb affiliates in the unlawful distribution scheme; that it provided the settling for subsidiary illegal agreements such as those relating to cleaner-cloths, dispense boxes and lens cabinets. Unquestionably, it brought the two corporations close together. But the law does not require hostility even between acknowledged competitors.

Maple Flooring Manufacturing Assn. v. U. S. 1925, 268 U. S. 563.

The surer test is whether it is necessary to eliminate the valid agreement in order successfully to eradicate the unlawful combination. Reference has already been made to the crucial part which the high consumer price on Soft-Lite lenses played in the logic underlying the arrangement between Bausch & Lomb and Soft-Lite. It may well be that the amputation of the distribution system would cause the manufacturing arrangement to atrophy. There is nothing in the manufacturing arrangement which compels its continuance beyond the point when it is mutually beneficial to both parties. But it is not the court's function to speculate on such an outcome. Soft-Lite may perhaps discover a lawful halo for its product. It may be
51 aided by recourse to legal resale price maintenance agreements under the Miller-Tydings Amendment. Weighing the several considerations involved, I conclude that the balance of advantage lies in permitting the manufacturing arrangement, properly insulated against the unlawful distribution system, to survive.

Since 1940, Soft-Lite has entered into resale price maintenance contracts with a number of wholesalers, fixing minimum resale prices of Soft-Lite lenses to be sold by them. The complaint does not count on these resale price maintenance agreements as acts done in violation of the Sherman Act. If the agreements are invalid implementations of the Miller-Tydings Amendment they would, of course, constitute in themselves violations of the Sherman Act. The answers do not affirmatively plead the agreements made under the Miller-Tydings Amendment as sanctioning the conduct of the defendants in whole or in part.

However, proof with respect to them has been received, consisting of the text of the agreements and a list of the wholesalers who have entered into them with Soft-Lite. The issue has been argued both orally and in the briefs.

These agreements are not subject to the defect exposed in United States v. The Univis Lens Co., — U. S. —, May 11, 1942. They suffer, however, from the circumstance that they came into existence as a patch upon an illegal system of distribution of which they have become an integral part. It has already been found herein that the system devised by Soft-Lite created not only a perpendicular system of control but, in addition, two horizontal systems, one involving competing wholesalers and the other competing retailers.

Such horizontal agreements are not sanctioned by the Miller-Tydings Amendment. In United States v. The Masonite Corp., supra, the court said:

"It should be noted in this connection that the Miller-Tydings Act (50 Stat. 693) which amended paragraph 1 of the Sherman Act so as to legalize certain types of resale price agreements expressly excluded 'any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.'"

See also Rayess v. Lane Drug Co., 1941, 138 Ohio St. 401, 35 N. E. 2d 447; Frank Fischer Merchandising Corp. v. Ritz Drug Co., N. J. 1941, 19 A. 2d 454.

The facts herein do not permit the treatment of the resale price maintenance agreements as isolated transactions separate and apart from the scheme of controlled distribution as a whole. They have become part of a system of horizontal agreements and, as such, do not enjoy the protection of the Miller-Tydings Act.

52 Plaintiff is, therefore, entitled to a decree cancelling such contract and enjoining the system of distribution employed by Soft-Lite, including the arrangements with wholesalers and retailers and cancelling the licenses outstanding between Soft-Lite and retailers and enjoining the continuance of the licensing system.

Dated May 27, 1942."

SIMON H. RIFKIND,
U. S. D. J.

53 In the District Court of the United States for the Southern District of New York

[Title omitted.]

Plaintiff's proposed findings of fact and conclusions of law

Copy Received: Lehrich and Lehrich, July 28, 1942. Copy Received 7/28/42. Simpson, Thacher & Bartlett.

54 *Notice of settlement*

Please take notice that the within is a copy of proposed Findings of Fact and Conclusions of Law, the original of which will be submitted to the Clerk of the United States District Court for the Southern District of New York at his office, Room No. 601,

United States Court House, Foley Square, New York City, on the 10th day of August, 1942, at 10:30 a. m.

Dated New York, N. Y., July 28, 1942.

SAMUEL S. ISSEKS,
Special Assistant to the Attorney General.

To:

SIMPSON, THACHER & BARTLETT,
120 Broadway, New York, N. Y.
LEHRICH & LEHRICH,
60 Wall Street, New York, N. Y.

(Submitted to Judge Rifkind 9/10/42.) (Not filed.)

55 In the District Court of the United States for the Southern District of New York

[Title omitted.]

Proposed findings of fact and conclusions of law

Pursuant to Rule 52 (a) of the Federal Rules of Civil Procedure, the Court specifically states the following as his findings of fact and conclusions of law:

FINDINGS OF FACT

I. This is a civil action brought by the United States of America, instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", said Act being commonly known as the Sherman Antitrust Act, the particular sections of said Act alleged to be violated being Sections 1 and 3 thereof.

II. The term "lenses," whenever used in the findings of fact, conclusions of law or decree of this Court in this case, includes blanks (rough opaque pieces of glass of suitable size, design, and composition for use when ground and polished as lenses in eyeglasses), semifinished blanks (ground and polished on one side only) and lenses (ground and polished on both sides but not cut to shape or edged).

56 III. Bausch & Lomb Optical Company is a manufacturer of ophthalmic goods, including glass and lenses. Soft-Lite Lens Company, Inc. is a distributor of lenses under their trademark "Soft-Lite." The individual defendants are officers of one or the other corporation.

IV. The defendants admit that Soft-Lite lenses move in interstate commerce, that they are manufactured by Bausch & Lomb

exclusively for Soft-Lite and that defendant Soft-Lite licenses retailers to deal in these Soft-Lite lenses.

V. Prior to 1919, the defendant Morris Singer marketed pink-tinted lenses under the trademark "Soft-Lite" owned by him, through his own retail shops in the City of New York. Soft-Lite lenses were ground for him by several domestic manufacturers from pink-tinted glass which he imported from France. In 1919, Morris Singer and defendant Nathaniel Singer, his son, formed the Optical Service Corporation to engage in the wholesale distribution of Soft-Lite lenses. In 1929, the name of Optical Service Corporation was changed to Soft-Lite Lens Company, Inc. Tinted lenses were sold in the market as far back as 1908. Pink-tinted lenses, however, were apparently introduced into the American market by Morris Singer. They won public favor slowly and in 1924, Soft-Lite sold only about 50,000 pairs.

VI. On June 11, 1924, Bausch & Lomb agreed to grind pink-tinted lenses for Soft-Lite out of glass imported and provided by the latter. In connection with this agreement, and at the time it was made, Bausch & Lomb was supplied by Soft-Lite with a list of the latter's customers to whom Bausch & Lomb referred in an office memorandum as jobber and retail licensees. Bausch & Lomb agreed that any orders for pink-tinted lenses which it might receive it would transmit to Soft-Lite.

57 VII. In August 1924, Bausch & Lomb contracted to manufacture and sell Soft-Lite glass and lenses to Soft-Lite, who agreed to buy the lenses in first and second quality. In addition, Bausch & Lomb agreed not to make competition for Soft-Lite either by selling pink-tinted glass to lens manufacturers or by selling pink-tinted lenses to the trade. This restriction was unlimited in point of time and space. This agreement is part of the Soft-Lite system of distribution.

VIII This manufacturing arrangement has continued to the present with certain changes. First, with respect to second quality lenses, it was agreed, some time prior to 1935, that Soft-Lite would no longer be obliged to accept them; that Bausch & Lomb would not sell them in the United States, but only abroad in countries in which Soft-Lite had no offices and at prices agreed to by both corporations. Second, Soft-Lite, which had been selling Bausch & Lomb-made lenses abroad, in 1938, through a wholly owned foreign subsidiary, executed agreements with two English lens manufacturers. These contracts provided that Soft-Lite sell to them Bausch & Lomb-made pink-tinted glass to be ground into lenses by the purchasers. It was also provided that the English companies would not ship pink-tinted lenses to the United States. Prior to going to England to negotiate these contracts, the defendant

Nathaniel Singer discussed the matter with Bausch & Lomb and, upon his return to the United States, advised Bausch & Lomb of the contracts. The contracts remained in force until cancelled in 1939 by the English companies. Third, Panoptik Co. Inc. (wholly owned by Bausch & Lomb) licensed Bausch & Lomb and American Optical Company to manufacture Panoptik bifocal lenses under certain patents. The licenses established the selling prices of Panoptic lenses. Although Soft-Lite does not have a license from Panoptik, Bausch & Lomb manufactures Panoptik Soft-Lite
58 lenses exclusively for Soft-Lite. At one time, Nat Singer was a director of Panoptik and he resigned on condition that the prices to be fixed on other tinted Panoptiks would be no less than the established prices on Panoptik Soft-Lites. He then asked Bausch & Lomb to confirm this understanding in writing, which Bausch & Lomb did by replying that Soft-Lite's protection as to American Optical's prices on Cruxite Panoptik (another pink-tinted lens) lay in the fact that Panoptik Company, wholly owned by Bausch & Lomb, controlled American Optical's prices by virtue of the license agreement. Fourth, Bausch & Lomb owns the Nokrome patents relating to lenses. In manufactures Nokrome Soft-Lite lenses for Soft-Lite without having licensed Soft-Lite under the patents. However, it has issued licenses to both the Shuron Optical Company and Titmus Optical which provide that the licensees sell to the wholesale trade at certain fixed prices and that in respect of pink-tinted lenses, the prices are identical with those at which Soft-Lite sells Soft-Lite lenses to wholesalers.

IX. The failure of the defense, which rested at the conclusion of the Government's case, to call certain persons as witnesses to rebut the testimony of the witness Wahlgren, although some of these persons were present in Court during the time of the presentation of the Government's case, raises a presumption that had these persons been called as witnesses by the defendants, their testimony would have been unfavorable to the defendants. I find that the testimony of witness Wahlgren has been true and accurate in all material respects.

X. The distribution of Soft-Lite lenses grown rapidly. In 1938, Soft-Lite sold 447,171 pairs for $807,000; in 1939, 518,219 pairs for $910,000; in 1940, 563,113 pairs for $987,000. Others have entered the pink-tinted lens field. The most prominent are American Optical Company, Titmus Optical Company,
59 Shuron Optical Company and Continental Optical Company. The aggregate sales of pink-tinted lenses by the companies mentioned, including Soft-Lite, are as follows: 1938, 1,150,523 pairs for $1,598,179; 1939, 1,406,713½ pairs for $1,887,868; 1940, 1,433,583½ pairs for $1,939,502.

XI. Pink-tinted glass for lenses has been manufactured not only by Bausch & Lomb but also by Pittsburgh Plate Glass Company, which supplied the companies above-mentioned other than Soft-Lite, and by L. J. Houze Convex Glass Company.

XII. Throughout the period mentioned, there has been competition between untinted and pink-tinted lenses, as well as in the various pink-tinted lenses and among the distributors of pink-tinted lenses.

XIII. Soft-Lite is engaged exclusively in selling. It does no manufacturing of any kind. The lenses it markets are purchased exclusively from Bausch & Lomb and their relation is buyer and seller, Soft-Lite obtaining complete title from Bausch & Lomb. Soft-Lite sells its lenses only to designated wholesalers. However, it promotes the sale of its lenses by appealing directly to retailers for patronage of its trade-marked article. Wholesalers designated by Soft-Lite to deal in Soft-Lite lenses may resell them only to retailers licensed by Soft-Lite. The form of license has undergone several changes. Until 1927, there was no written form of license although retailers who dealt in Soft-Lite lenses were called licensees by Soft-Lite. Sometime in 1927, Soft-Lite established the practice of having the retailer, upon placing his first order with the wholesaler for Soft-Lite lenses, subscribe to a paper entitled "Signed Application for a Soft-Lite License Privilege." The application was subject to acceptance by Soft-Lite. Therein
60 the applicant declared that it was "a recognized high grade ethical optical concern," that it was cognizant of "the standards and principles upon which licenses for Soft-Lite are granted" and that it "subscribes to these principles." Between 1928 and 1933, a slightly revised form was employed which did not differ materially from the preceding one. Both forms of application called for endorsement or recommendation of the retailer by one of the designated wholesalers or by a Soft-Lite representative. It did not require the approval of Bausch & Lomb.

XIV. In May 1933, a new plan of distribution was devised which has, with one change, prevailed to the present time. Two classes of retail licenses were established; one called a "stock license" issued to retailers who were equipped to perform certain finishing operations upon lenses; the other called a "prescription license" issued to retailers not so equipped.[1] There were different requirements as to minimum purchases and different price discounts applicable to the two licenses.

XV. The license became a bilateral agreement between the retailer and Soft-Lite. In part, it provided:

[1] The classification of retailers into stock retailers and prescription retailers is one commonly recognized in the trade with varying qualifying characteristics.

"1. Licensor hereby grants licensee a revocable, nonexclusive and nontransferable license to purchase said Soft-Lite lenses and lens blanks for a licensed Soft-Lite Distributor or Class 'A' Wholesale Licensee and to resell said lenses at prices prevailing in the locality in which licensee conducts his practice or business.

"2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, agreeing not to sell or deal in any lens similar in tint, color or shade to Soft-Lite lenses. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer. * * *

"5. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days * * *"

Upon the issuance of a license to a retailer, the designated
61 wholesalers were notified that they were at liberty to sell to him.

XVI. Paragraph 2 of the license between the retailer and Soft-Lite was changed in February 1939, to read as follows:

"2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, it being understood that the promotion of the sale of other lenses of a similar color or the substitution of other lenses for Soft-Lite lenses, is detrimental to the good name and reputation of Soft-Lite lenses and may adversely affect the prestige thereof. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor and only to the patient or consumer."

This change was the result of a cease and desist order issued by the Federal Trade Commission.

XVII. Bausch & Lomb also manufactured patented lenses with specified characteristics under the names Orthogon and Panoptik. These lenses were manufactured both in pink-tinted glass and other glass. A number of reciprocal arrangements prevailed between the two corporations arising out of this overlapping. Thus, Orthogon licensees of Bausch & Lomb were privileged to purchase Orthogon Soft-Lites. Soft-Lites stock licensees were privileged to buy uncut Orthogon Soft-Lites. Orthogon "Franchise Dealers" were automatically listed as Soft-Lite prescription licensees. Panoptik licensees could buy Panoptik Soft-Lites. Soft-Lite licensees could not deal in Panoptik bifocals unless licensed by Panoptik.

Another arrangement between the two corporations provided for a method to be used by a new Orthogon and Soft-Lite licensee in purchasing his initial minimum lens requirements of both Orthogons and Soft-Lites. This provided as follows:

"A customer who is neither a Soft-Lite Stock Licensee
62 nor an Orthogon Franchise Dealer may qualify for both Licenses simultaneously providing, of course, that he meets all of the necessary requirements. In this case both the procedure for selling a Soft-Lite Stock License and that of appointing an Orthogon Licensee must be followed. Such a transaction can only be handled by a wholesaler who is both a Soft-Lite Distributor and an Orthogon Distributor. The initial lens stock must call for a minimum of 50 pairs of Soft-Lite Lenses and 100 pairs of Orthogon Lenses and may be made up in various assortments, a pair of Orthogon Soft-Lite Lenses being considered as *both* a pair of Soft-Lite Lenses and a pair of Orthogon Lenses, for example, an order for 50 pairs of Orthogon Soft-Lite Lenses and 50 pairs of white Orthogon Lenses would meet the initial stock requirements."

XVIII. Soft-Lites are distributed by 7,000 to 8,000 licensed retailers in the United States. The total number of oculists and optometrists in the United States is 30,000, of whom about one-half are active purchasers of lenses.

XIX. Soft-Lite exerted every effort to keep the stream of its lenses well within defined channels which it established, reaching from the source of manufacture to the ultimate consumer. It selected only those wholesalers who were willing to cooperate with its policy. Of the approximately 359 wholesalers in the United States, exclusive of branch offices, Soft-Lite dealt with 114 of them. It licensed only those retailers who agreed to and observed its policy. Excluded from its wholesale customers were those who did business with "unethical retailers"; wholesale branches of the American Optical Company; and wholesalers whose volume was relatively small. In addition, it was apparently necessary to have Bausch & Lomb's approval before one could be designated a Soft-Lite wholesaler. Smith, a wholesaler from Texas, in the latter part of 1938, after having decided to go into the wholesale business, asked Singer to give him a Soft-Lite license. Singer advised Smith that he would be made a Soft-Lite wholesaler only if Smith received the approval of Bausch & Lomb and Riggs. Thereafter, Smith requested Withington, Bausch & Lomb's Chicago
63 representative, to use his influence in obtaining the necessary consent. Withington advised Smith by telegram that it could not be obtained. That Bausch & Lomb has some say as to whom Soft-Lite sells is also apparent by Ramaker's letter to Landis of November 2, 1939, wherein he writes concerning prospective sales by Soft-Lite to a certain wholesaler:

"The purpose of this note is to give you a 'tip' that it probably would be unwise for the Soft-Lite Lens Company to recognize him as a wholesaler.

"P. S. I forgot to add that he does not have a Panoptik wholesale license."

XX. Excluded from the retailer list were those who failed to maintain the price prevailing in the locality; "indulged in installment advertising where prices are quoted in any form"; maintained their establishments in a department store or jewelry house; did not conduct their business or practice in a "reputable and ethical manner." In its advertising Soft-Lite stressed that it was protecting its licensed retailers from the competition of unethical practioners and price-cutters.

XXI. Soft-Lite's policy was enforced by scrutiny before the retailer was licensed, by surveillance through Soft-Lite's salesmen, and by cancellation of the retailer's license if he failed to abide by Soft-Lite's policy. Upon cancellation, wholesalers were notified in writing that the retailer was no longer entitled to receive Soft-Lite lenses. Wholesalers observed this exclusion. In addition, Soft-Lite periodically issues to its wholesalers lists containing the names of all cancellations and of all new licensees since the previous publication.

XXII. As an additional device for the enforcement of
64 its policy, and especially to create the appearance of enforceability, Soft-Lite used a "protection certificate." Each pair of Soft-Lite lenses was accompanied by a numbered certificate which vouched for the genuineness of the lenses and disclosed, by means of the number, the wholesale source of the lens. The testimony is to the effect that the protection certificate was but rarely used to trace the wholesale source of lenses found in the hands of unlicensed retailers. It is clear, however, that it could be used for that purpose and that wholesalers were informed that it was intended for that purpose.

XXIII. It is undisputed that Soft-Lite designated to the wholesalers the prices to be received by them from the retailers. This was done by means of published price lists. These lists were made available to retailers as well as to wholesalers and the retailers were thus informed of the prices at which they could expect to purchase Soft-Lite lenses from the wholesalers. Nathaniel Singer, president of Soft-Lite, testified that these price lists were intended only as suggestions. If so, they were suggestions which the wholesalers regarded as obligatory. Both Soft-Lite and the wholesalers understood that material deviation would result in the discontinuance of business. Soft-Lite's advertising, price lists and conduct, as well as Nathaniel Singer's speeches at trade meetings, confirmed this understanding.

XXIV. Soft-Lite did not establish uniform retailer-consumer prices on Soft-Lite lenses, with the exception that defendants admit that the prices to be charged by retailers to consumers were fixed

on "goggles" and that such goggles prices were contained in a catalog published and distributed in 1936. A number of regulatory forces were exerted by Soft-Lite and by its wholesalers which prevented consumer prices from being competitive. The
65 first of these forces was the retailers' agreement to sell at "prices prevailing in the locality." The second was Soft-Lite's insistence that its lenses be sold at a premium over comparable untinted lenses. Departure from these two standards was punished by revocation of license. Restoration followed only upon adequate assurance of compliant behavior in the future. By these means, Soft-Lite was assuring the trade that it was protecting a certain fixed profit to the retailer. Soft-Lite's salesmen and representatives were instructed to and did observe whether Soft-Lite policies were carried out by wholesalers and retailers. Where suspicion was aroused by the complaint of one retailer against another, "shopping" was engaged in by agents of Soft-Lite to ascertain whether there was noncompliance with the price regulations.

XXV. The Bausch & Lomb affiliates are six wholesale distributors of ophthalmic goods. Over a period of years, after 1924, Bausch & Lomb acquired the controlling interest in each of them. The six wholesale houses operate, in the aggregate, 164 branches. They constitute by far the largest outlet for Soft-Lite lenses, accounting for 60 percent of the sales. It was stipulated, for purposes of this trial only and for no other purpose, and subject to conditions stated in the stipulation, that "Bausch & Lomb, through its ownership of a majority of the outstanding voting stock of each said wholesale companies, has power to coordinate and control the sales and pricing policies of said wholesale companies."

XXVI. Whatever may be the legal relationship between Bausch & Lomb and its affiliates, the business relationship is quite clear. Manifestly, Bausch & Lomb is vitally interested in the price which Soft-Lite charges to wholesalers, since the Bausch & Lomb affiliates constitute the most prominent group among Soft-Lite's wholesale customers. It is equally clear that Bausch & Lomb is con-
66 cerned with the price level of the lens to the consumer. The logic of its concern was well expressed in 1925 by Sterling, an officer of Bausch & Lomb, in an interoffice memorandum:

"The economic justification for the existence of Soft-Lite in the picture has always been that they start with high retail prices and from this develop a price schedule that leaves an attractive profit at every link in the chain of distribution, including the very sizeable mark-up in price between our sales price to Soft-Lite at the factory and our purchase price paid to Soft-Lite at distribution. If the retailers are not able to obtain the high prices listed, this becomes a matter of vital concern to us * * *."

I do not accept this as proof of the existence of a "list" of prices to be charged by retailers as Sterling's explanation of the use of that word is adequate. I do take it as evidence that Bausch & Lomb was consciously aware of the business logic of its relations with Soft-Lite.

XXVII. The evidence clearly supports the conclusion that price was frequently the subject of discussion between Soft-Lite and Bausch & Lomb. These discussions related to every segment of the price structure. Whenever Bausch & Lomb reduced its price to Soft-Lite, it insisted that the reduction be transmitted down along the chain of distribution; and in every instance but one Soft-Lite complied. It is equally clear that the affiliated corporations charged retailers the price designated for that purpose by Soft-Lite; that they cooperated in weeding out so-called undesirable retailers; and that some of them participated in discussions with Soft-Lite concerning the rather complicated Soft-Lite price schedules before they were published or revised. Branch managers of the affiliates received instructions from their superiors that the retaliers buying Soft-Lites from them had to charge certain fixed prices and that the failure to maintain such prices would result in the cancellation of that retailer's license.

67 These instructions were carried out.

XVIII. There were many points of cooperative contact between Bausch & Lomb and Soft-Lite. Lists of wholesale customers were exchanged. "Tips" with respect to the quality of dealers were given by one to the other. When there was doubt about a customer there was discussion between Bausch & Lomb and Soft-Lite and an exchange of experience in relation to that customer. Likewise, with respect to a number of items sold in the opical trade primarily for advertising purposes rather than for profit, there was very considerable cooperation including agreements to charge the identical price. This applied to cleaning cloths, a "dispenso box," or receptacle for cleaning cloths, and lens cabinets.

XXIX. Bausch & Lomb scrupulously refrained from competing with Soft-Lite in pink-tinted lenses. In 1936, however, Bausch & Lomb, over Soft-Lite's protest, introduced "Ray Ban," a green-tinted lens, which it marketed directly without the aid of Soft-Lite. However, Bausch & Lomb did not consider "Ray Ban" a competitive lens of Soft-Lite. Soft-Lite sold its lenses to wholesalers who were in active competition with the affiliated wholesalers, and the affiliated wholesalers as well as the nonaffiliated wholesalers sold lenses which were competitive with Soft-Lites.

XXX. In 1924, Bausch & Lomb and Soft-Lite did not envision in detail the 1933 distribution system. On the other hand, the logic of Soft-Lite's status in the lens business made the discussion

of price between Bausch & Lomb and Soft-Lite imperative. And this was true even before Bausch & Lomb had acquired affiliates who were Soft-Lite's chief customers. Soft-Lite constituted an additional link in the chain of distribution inserted between the manufacturer and the wholesaler. If its profits were not
68 to be obtained at the expense of the manufacturer or of the manufacturer's customers, it must be derived from a higher price charged to the consumer. A premium price to the consumer above untinted lenses was, therefore, the sine qua non of Soft-Lite's existence, and Soft-Lite's ability to market its lenses at such a premium price was the only justification of the exclusive agreement made with it by Bausch & Lomb.

XXXI. The evidence does not justify an inference that in 1924 or at any time thereafter Bausch & Lomb undertook to assist Soft-Lite to attain such a goal, except as the exclusive manufacturing agreement itself may be so regarded. The inference is, however, inescapable that before Bausch & Lomb granted Soft-Lite an exclusive manufacturing arrangement it was satisfied that Soft-Lite would so market the product as to justify that arrangement.

XXXII. The "halo" built around Soft-Lite lenses was no more than a glitter of high price, artificially maintained by a framework of agreements in restraint of trade; these were designed to confer upon Soft-Lite the power to control the price of its lenses at every stage of distribution down to the consumer. They were effective instruments for the accomplishment of that purpose and were successfully used to attain it.

XXXIII. It is an established trade practice that the retail purveyor of the lenses is frequently the one who also "prescribes" for the patient-customer. Into his quasiprofessional judgment, is thus introduced the knowledge that he can prescribe a lens whereon his profit is greater and this temptation is more easily yielded to when there is security against competitive comparison. That security Soft-Lite, by its advertising, salesmanship, and by public addresses at trade meetings, undertook to provide for those who dealt in its products. The paucity of complaints and the
69 relative rarity of punitive action against violators of the ethics preached by Soft-Lite attest the success of its efforts.

XXXIV. The main purpose of the manufacturing agreement between Bausch & Lomb and Soft-Lite is to provide a source of supply for Soft-Lite. The covenant by Bausch & Lomb not to compete with Soft-Lite or to make competition for it is for the protection of Soft-Lite.

XXXV. I do not find that Soft-Lite's specifications for the glass constituted a secret formula for the protection of which a restraining covenant would be proper.

XXXVI. Nothing in the evidence indicates that Bausch & Lomb enjoyed a monopoly in the manufacture of glass for lenses, whether pink or otherwise. On the contrary, the evidence is clear that other manufacturers of lenses have had access to pink glass from other sources and that the success of Soft-Lite has stimulated emulation and competition.

XXXVII. Unquestionably the exclusive agreement between Bausch & Lomb and Soft-Lite brought the two corporations close together.

XXXVIII. Since 1940, Soft-Lite has entered into resale price maintenaince contracts with a number of wholesalers, fixing minimum resale prices of Soft-Lite blanks to be sold by them. These contracts became an integral part of the illegal system of distribution and an integral part of a system or horizontal agreements between wholesalers.

XXXIX. The system of distribution devised by Soft-Lite created not only a perpendicular system of control but, in addition, two horizontal systems, one involving competing wholesalers and the other involving competing retailers.

70 CONCLUSIONS OF LAW

I. The Court has jurisdiction of this cause under the Act of July 2, 1890, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

II. The defendants have contracted, combined, and conspired in violation of Sections 1 and 3 of the Sherman Act by restraining trade and commerce in Soft-Lite lenses.

III. The Soft-Lite distribution system constitutes an agreement, combination, and conspiracy between all the defendants and the designated wholesalers, to boycott all retailers not licensed by Soft-Lite in violation of Sections 1 and 3 of the Sherman Act.

IV. The Soft-Lite distribution system also constitutes an agreement, combination, and conspiracy between all the defendants and the designated wholesalers to charge uniform prices to all retailer licenses in violation of Sections 1 and 3 of the Sherman Act.

V. The Soft-Lite distribution system also constitutes an agreement, combination, and conspiracy between all the defendants and the licensed retailers to charge arbitrary, noncompetitve prices to the public in violation of Sections 1 and 3 of the Sherman Act.

VI. It does not matter whether the market in the commodity involved is or is not dominated by the parties to the agreement. It matters not that the price is not uniform. The law is not mollified by the circumstance that under the operation of the agree-

ments the sale of the commodity has increased and competition by those outside the conspiracy stimulated. The agreement is not saved by the circumstances that as part thereof some very desirable ends may be served.

71 VII. The fact that there is no written agreement here between Soft-Lite and the wholesaler does not immunize the distribution system. The agreement is implicit in the operation of the system. The living reality of uniform prices from wholesalers to retailers, corresponding to the written instructions of Soft-Lite, of wholesalers' refusal to sell to unlicensed retailers, of surveillance of wholesalers by means of protection certificates and over retailers by "shopping," compel the conclusion that between the wholesalers and Soft-Lite there was agreement or at least acquiescence in a program of concerted action.

VIII. Defendants call the favored retailers "licensees." When admitted to the privilege of purchasing Soft-Lite lenses, they receive from Soft-Lite a document called a license. But Soft-Lite has no privilege to confer a license. The right to buy Soft-Lites from those who own them is not within its gift. The trade-mark does not give Soft-Lite any such power to project its control over the trade-marked article. Without the boycott maintained by it, in concert with the wholesalers, against unlicensed retailers, Soft-Lite's attempt to exercise this pretended power would have been a mere theatrical gesture. The force which transferred the license from the stage to the market place was the force of the boycott. And it is this very exertion of force by agreement or combination against the freedom of trade which is outlawed by the Sherman Act.

IX. In defending this system of controlled distribution, defendants rely chiefly on United States v. Colgate and Co. (1919), 230 U. S. 300. That case affirmed the right of a manufacturer or trader to choose his customers and to define in advance the conditions upon which trade with them would be conducted. The limited significance of that case has been stated by the Supreme Court itself in the Beech-Nut case, 257 U. S. 441, 452, and has no application to the facts in this case.

72 X. The written agreements or licenses between Soft-Lite and the retailers are violative of Sections 1 and 3 of the Sherman Act. It is sufficient to point to the promise exacted from the retailer to sell at prices "prevailing in the locality." The only defense which can be suggested is that the retail trade is intrastate in character. But the defense is insufficient because the elimination of retail competition and the maintenance of a high retail price was the keystone of the arch of the distribution system. It is a crucial part of a system involving interstate commerce.

XI. The defendants suggest that only controls of the price structure as between competitive business units are violative of the law, whereas the controls in the case at bar are not between competitive units. However, restraints effected by noncompetitive units are within the Sherman Act. The suggestion cannot be accepted for another reason. Here we have in fact an illegal agreement among the wholesalers through Soft-Lite and an illegal agreement among the retailers through Soft-Lite. Each participant, of course, understands that he is part of a larger system.

XII. The main purpose of the manufacturing arrangement between Bausch & Lomb and Soft-Lite, found in several documents and in a course of conduct, is to provide a source of supply for Soft-Lite and this is accomplished by Bausch & Lomb's covenant to manufacture and sell glass and lenses to Soft-Lite. This manufacturing arrangement contains several covenants, two of which can be eliminated without the necessity of invalidating the entire arrangement, namely, the selling covenant (Bausch & Lomb agrees to furnish glass and lenses to Soft-Lite) and the restrictive covenant (Bausch & Lomb agrees not to compete with Soft-Lite in the sale of pink-tinted lenses and not to sell pink-tinted glass to be manufactured into competitive lenses). The restrictive covenant is for the protection of Soft-Lite and is separable from the supply covenant. The voiding of the restrictive
73 covenant would still permit the main purpose of the contract to be served, the providing of Soft-Lite with a source of supply. However, the selling covenant and the restrictive covenant are both legal and are neither violative of the law independent of the distribution system nor are they contaminated by the vice of the distribution system of which they both form a part. The law is violated only by unreasonable restraints and the covenant to manufacture and the restrictive covenant are not unreasonable.

XIII. The source of supply covenant is a bargain by Bausch & Lomb to sell exclusively to Soft-Lite and there is nothing contrary to public policy in it where Bausch & Lomb does not enjoy a monopoly in the manufacture of pink glass or pink lenses.

XIV. The test to determine the necessity of eliminating the entire manufacturing arrangement between Bausch & Lomb and Soft-Lite where it is part of the illegal method of distribution is whether it is necessary to eliminate it in order successfully to eradicate the unlawful combination. I find that the balance of advantage lies in permitting that part of the manufacturing arrangement whereby Bausch & Lomb sells glass and lenses to Soft-Lite and the restrictive covenant, properly insulated against the unlawful distribution system, to survive.

XV. That portion of the manufacturing arrangement whereby Bausch & Lomb sells second quality lenses only abroad and at prices fixed by it and Soft-Lite violates Section I of the Sherman Act and should be cancelled and enjoined.

XVI. That portion of the manufacturing arrangement whereby Bausch & Lomb manufactured pink-tinted glass to be sold by Soft-Lite to two English lens manufacturers under agreements whereby these lens manufacturers agreed not to sell pink-tinted lenses in the United States, violated Section 1 of the Sherman Act. Although these agreements were terminated in 1939,
74 the plaintiff is entitled to an injunction against similar arrangements in the future.

XVII. That portion of the manufacturing arrangement whereby Bausch & Lomb fixes the prices of other Panoptik tinted lenses, no less than Panoptik Soft-Lite prices, violates Sections 1 and 3 of the Sherman Act and should be canceled and enjoined.

XVIII. That portion of the manufacturing arrangement whereby Bausch & Lomb fixes the prices of other Nokrome tinted lenses, no less than Nokrome Soft-Lite prices, violates Sections 1 and 3 of the Sherman Act and should be canceled and enjoined.

XIX. The resale price maintenance agreements executed by the Soft-Lite Company with its wholesale customers suffer from the circumstance that they came into existence as a patch upon the illegal system of distribution of which they have become an integral part. It has already been found herein that the system of distribution devised by Soft-Lite created not only a perpendicular system of control but, in addition, two horizontal systems, one involving competing wholesalers and the other competing retailers. Such horizontal agreements are not sanctioned by the Miller-Tydings Amendment. The facts herein do not permit the treatment of the resale price maintenance agreements as isolated transactions separate and apart from the scheme of controlled distribution as a whole. They have become part of a system of horizontal agreements and, as such, do not enjoy the protection of the Miller-Tydings Act.

XX. Plaintiff is entitled to a decree canceling the resale price maintenance agreements, and enjoining the Soft-Lite system of distribution, including the arrangements with wholesalers and retailers and canceling the licenses outstanding between Soft-Lite and retailers and enjoining the continuance of the licensing system and canceling certain portions of the manufacturing arrangement between Bausch & Lomb and Soft-Lite.

———— ————, *U. S. D. J.*

Dated New York, N. Y.,
this — – days of ————————, 1942.

75 In United States District Court, Southern District of New York

[Title omitted.]

Findings of fact and conclusions of law

Filed Nov. 7, 1942

Pursuant to rule 52 (a) of the Federal Rules of Civil Procedure, the court specifically states the following as its findings of fact and conclusions of law:

Findings of fact

1. This is a civil action brought by the United States of America, instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the Sherman Antitrust Act, the particular sections of said Act alleged to be violated being Sections 1 and 3 thereof.

76 2. The term "lenses," whenever used in the findings of fact, conclusions of law or decree of this Court in this case, includes blanks (rough opaque pieces of ophthalmic glass of suitable size, design, and composition for use when ground and polished as lenses in eyeglasses), semifinished blanks (ground and polished on one side only), uncut lenses (ground and polished on both sides but not cut to shape or edged), as well as finished lenses.

3. The defendant Bausch & Lomb Optical Company is a New York corporation with its principal office and place of business located in Rochester, New York, and is a manufacturer of ophthalmic goods including glass and lenses. The defendant M. Herbert Eisenhart is the President, the defendant Ben A. Romaker is ophthalmic sales manager, and the defendant Joseph F. Taylor is Vice President and Treasurer of the said Company. Hereinafter these defendants will be referred to collectively as "Bausch & Lomb."

4. The defendant Soft-Lite Lens Company, Inc. is a New York corporation with its office and place of business located in the Southern District of New York, and is the sole distributor of pink-tinted ophthalmic lenses manufactured and sold under the trade name "Softlite." The defendant Nathaniel Singer is the President, the defendant R. G. Landis is Vice President;

77 and the defendant Morris Singer is Chairman of the Board of Directors of the said Company. Hereinafter these de-

fendants, with the exception of the defendant Morris Singer, will be referred to collectively as "Soft-Lite."

5. Both Bausch & Lomb and Soft-Lite are engaged in interstate commerce, and Soft-Lite lenses are sold and distributed in interstate commerce and in the District of Columbia.

6. Soft-Lite Lens Company, Inc., prior to 1929, was known as Optical Service Corporation. That corporation was organized in 1919 by the defendants Morris Singer and Nathaniel Singer to engage in the general distribution of Soft-Lite lenses. The trade-mark "Soft-Lite" was registered by the defendant Morris Singer in 1913, prior to which date he had introduced pink or rose-tinted lenses into the American market and sold them in his retail optical stores under the name "Soft-Lite."

7. On June 11, 1924, Bausch & Lomb entered into an arrangement to grind pink-tinted lenses for Soft-Lite out of glass imported and provided by the latter. In connection with this arrangement, and at the time it was made, Bausch & Lomb was supplied by Soft-Lite with a list of the latter's customers to whom Bausch & Lomb referred in an office memorandum as
jobbers and retail licensees. Bausch & Lomb agreed that
78 any orders for pink-tinted lenses which it might receive it would transmit to Soft-Lite.

8. In August 1924, Bausch & Lomb contracted to manufacture and sell Soft-Lite glass and lenses to Soft-Lite, who agreed to buy the lenses in first and second quality. In addition, Bausch & Lomb agreed not to make competition for Soft-Lite either by selling pink-tinted glass to lens manufacturers or by selling pink-tinted lenses to the trade.

9. This manufacturing arrangement has continued to the present with certain changes:

The first change related to Nokrome lenses with respect to which Bausch & Lomb applied for a patent. On July 6, 1932, Bausch & Lomb wrote to Soft-Lite in part as follows:

"Insofar as the marketing of product manufactured under this patent involves the use of Soft-Lite glass as such, we are willing to grant you the exclusive distribution under the same general conditions as we agreed to in the letter written by our company to you under date of September 13, 1926."

The second change related to second-quality lenses. Sometime prior to 1935, it was agreed that Soft-Lite would no longer be obliged to accept them; that Bausch & Lomb would not sell them in the United States, but only abroad in countries in which Soft-Lite had no offices and at prices agreed to by both
corporations.

79 10. The distribution of Soft-Lite lenses has grown rapidly. In 1938, Soft-Lite sold 447,171 pairs for $807,000; in 1939,

518,219 pairs for $910,000; in 1940, 563,113 pairs for $987,000. Others have entered the pink-tinted lens field. The most prominent are American Optical Company, Titmus Optical Company, Shuron Optical Company, and Continental Optical Company. The aggregate sales of pink-tinted lenses by the companies mentioned, including Soft-Lite, are as follows: 1938, 1,150,523 pairs for $1,598,179; 1939, 1,406,713½ pairs for $1,887,868; 1940, 1,433,583½ pairs for $1,939,502.

11. Pink-tinted glass for lenses has been manufactured not only by Bausch & Lomb but also by Pittsburgh Plate Glass Company, which supplied the companies above-mentioned other than Soft-Lite, and by L. J. Houze Convex Glass Company.

12. Throughout the period mentioned, there has been competition between untinted and tinted lenses, as well as in the various tinted lenses and among the distributors of pink-tinted lenses.

13. Soft-Lite is engaged exclusively in selling. It does no manufacturing of any kind. The lenses it markets are purchased exclusively from Bausch & Lomb and their relation is that of buyer and seller, Soft-Lite obtaining complete title from Bausch &
80 Lomb. Soft-Lite sells its lenses only to designated wholesalers. However, it promotes the sale of its lenses by appealing directly to retailers for patronage of its trade-marked article. Wholesalers designated by Soft-Lite to deal in Soft-Lite lenses may resell them only to retailers licensed by Soft-Lite. The form of license has undergone several changes. Until 1927, there was no written form of license although retailers who dealt in Soft-Lite lenses were called licensees by Soft-Lite. Sometime in 1927, Soft-Lite established the practice of having the retailer, upon placing his first order with the wholesaler for Soft-Lite lenses, subscribe to a paper entitled "Signed Application for a Soft-Lite Licensee Privilege." The application was subject to acceptance by Soft-Lite. Therein the applicant declared that it was "a recognized high grade ethical optical concern," that it was cognizant of "the standards and principles upon which licenses for Soft-Lite are granted" and that it "subscribes to these principles." Between 1928 and 1933, a slightly revised form was employed which did not differ materially from the preceding one. Both forms of application called for endorsement or recommendation of the retailer by one of the designated wholesalers or by a Soft-Lite representative. It did not require the approval of Bausch & Lomb.
81 14. In May 1933, a new plan of distribution was devised which has, with one change, prevailed to the present time. Two classes of retail licenses were established; one called a "stock license" issued to retailers who were equipped to perform certain finishing operations upon lenses; the other called a "prescription

license" issued to retailers not so equipped. There were different requirements as to minimum purchases and different price discounts applicable to the two licenses. The classification of retailers into stock retailers and prescription retailers is one commonly recognized in the trade with varying qualifying characteristics.

15. The license became a bilateral agreement between the retailer and Soft-Lite. In part, it provided:

"1. Licensor hereby grants licensee a revocable, non-exclusive and non-transferable license to purchase said Soft-Lite lenses and lens blanks for a licensed Soft-Lite Distributor or Class 'A' Wholesale Licensee and to resell said lenses at prices prevailing in the locality in which licensee conducts his practice or business.

"2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, agreeing not to sell or deal in any lens similar in tint, color or shade
82 to Soft-Lite lenses. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer. * * *

"5. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days * * *"

Upon the issuance of a license to a retailer, the designated wholesalers were notified that they were at liberty to sell to him.

16. Paragraph 2 of the license between the retailer and Soft-Lite was changed in February, 1939 to read as follows:

"2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses; it being understood that the promotion of the sale of other lenses of a similar color, or the substitution of other lenses for Soft-Lite lenses, is detrimental to the good name and reputation of Soft-Lite lenses and may adversely affect the prestige thereof. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor and only to the patient or consumer."

17. By the establishment, operation, and enforcement of its licensing system, Soft-Lite, since that time, has exercised control over the prices to be charged by optical wholesalers and retailers for Soft-Lite lenses.

18. The relationship between Bausch & Lomb and Soft-Lite has at all times been a close, cordial, and cooperative one.
83 There were numerous discussions and correspondence between them with respect to wholesale customers, retailers, prices, advertising policies, and general trade information.

19. Bausch & Lomb also manufactured patented lenses with specified characteristics under the names Orthogon and Panoptik. These lenses were manufactured both in pink-tinted and other glass. A number of reciprocal arrangements prevailed between the two corporations arising out of this overlapping. Thus, Orthogon licensees of Bausch & Lomb were privileged to purchase Orthogon Soft-Lites. Soft-Lite stock licensees were privileged to buy uncut Orthogon Soft-Lites. Orthogon "Franchise Dealers" were automatically listed as Soft-Lite prescription licensees. Panoptik licensees could buy Panoptik Soft-Lites. Soft-Lite licensees could not deal in Panoptik bifocals unless licensed by Panoptik.

20. Soft-Lites are distributed by 7,000 to 8,000 licensed retailers in the United States. The total number of retailers in the United States is 30,000, of whom about one-half are active purchasers of lenses.

21. Soft-Lite followed its plan of distribution. It selected only those wholesalers who were willing to cooperate with its policy. It licensed only those retailers who agreed to and observed its policy. Wholesalers who did business with "unethical retailers" or were branches of the American Optical Company or whose
84 business volume was small were excluded from among Soft-Lite's wholesale customers.

22. Retailers who failed to maintain the price prevailing in the locality or employed installment advertising wherein prices were quoted or maintained their establishments in a department store or jewelry house or did not conduct their business or practice in a "reputable and ethical manner" were excluded from the retailer's license.

23. Soft-Lite's system of distribution was enforced by scrutiny of the applicant before the retailer was licensed, by surveillance through Soft-Lite's salesmen and by cancellation of the retailer's license if he failed to abide by its terms. Upon cancellation of a license wholesalers were notified in writing that the retailer was no longer entitled to receive Soft-Lite lenses. Wholesalers observed this exclusion. Periodically Soft-Lite issued to its wholesalers lists containing the names of retailers whose licenses had been cancelled and the names of retailers who had been awarded licenses since the previous publication.

24. Each pair of Soft-Lite lens was accompanied by a numbered certificate called a "Protection Certificate," which vouched for the genuineness of the lenses and disclosed, by means of the num-
85 ber, the wholesale source of the lens. The Protection Certificate was but rarely used to trace the wholesale lenses found in the hands of unlicensed retailers. It could be used for

that purpose and wholesalers were informed by Soft-Lite that it was intended for that purpose.

25. Soft-Lite designated to the wholesalers the prices to be received by them from the retailers by means of published price lists.

26. Soft-Lite did not establish uniform retailer-consumer prices on Soft-Lite lenses except that for a short time Soft-Lite did fix the price to be charged by retailers to consumers for "goggles". Soft-Lite and its wholesalers did exert regulatory forces upon the prices paid by consumers: the retailers agreed to sell the lenses at "prices prevailing in the locality": Soft-Lite required retailers to sell its lenses at a premium over comparable untinted lenses.

27. Sixty per cent of the total sales of Soft-Lite lenses is made by six optical wholesalers in whom, over a period of years subsequent to 1924, Bausch & Lomb acquired majority stock interests. These six optical wholesalers (hereinafter termed the "Bausch & Lomb affiliates") or their predecessor companies were all substantial customers of Soft-Lite before such affiliation, and they have continued as such. It was stipulated, for purposes of this trial only and for no other purposes, and subject to the conditions stated in the stipulation, that "Bausch & Lomb, through its ownership of a majority of the outstanding voting stock of each of said wholesale companies, has power to coordinate and control the sales and pricing policies of said wholesale companies."

86

28. All of the optical wholesale customers of Soft-Lite, whether affiliated with Bausch & Lomb or not, have at all times been dealt with by Soft-Lite on the same terms and all have been cooperative with Soft-Lite in the operation and maintenance of Soft-Lite's prices and distribution system.

29. Price was frequently the subject of discussion between Soft-Lite and Bausch & Lomb. These discussions related to every segment of the price structure. Whenever Bausch & Lomb reduced its price to Soft-Lite it insisted that Soft-Lite transmit the reduction down along the chain of distribution; and in every instance but one Soft-Lite complied.

30. With respect to the number of items sold in the optical trade primarily for advertising purposes rather than for profit, there was very considerable cooperation between Soft-Lite and Bausch & Lomb, including agreements to charge the identical price. This applied to cleaning cloths, a receptable for cleaning cloths, and lens cabinets.

87

31. Bausch & Lomb refrained from competing with Soft-Lite in pink-tinted lenses. In 1936, Bausch & Lomb over Soft-Lite's protest marketed "Ray Ban," a green tinted lens, directly without the aid of Soft-Lite. Soft-Lite sold its lenses to wholesalers who were in active competition with the affiliated wholesalers, and the affili-

ated wholesalers as well as the nonaffiliated wholesalers sold lenses which were competitive with Soft-Lites.

32. The exclusive manufacturing agreement made in 1924 between Bausch & Lomb and Soft-Lite has no connection with the Soft-Lite distribution system. When made in 1924, the parties did not envision the Soft-Lite licensing system established in 1933. Bausch & Lomb has played no part in the establishment, operation or maintenance of the Soft-Lite distribution system, either in connection with the aforesaid exclusive manufacturing arrangement or otherwise. Bausch & Lomb has not agreed with Soft-Lite with respect to its selection, rejection, or discontinuance of relations with its wholesale customers or retail licensees.

33. Soft-Lite's object in developing these arrangements
88 was to obtain from a highly regarded domestic source a product of uniformly good quality. Bausch & Lomb's object was to secure a prospectively increasing outlet for its manufacture. The purpose of that portion of the arrangements whereby Bausch & Lomb agreed not to compete with Soft-Lite either by selling pink-tinted ophthalmic glass to other lens manufacturers or by selling pink-tinted lenses to the trade was to protect Soft-Lite. Soft-Lite has expended substantial sums for advertising and in the development of good will in connection with a new article of commerce.

34. Bausch & Lomb did not enjoy a monopoly in the manufacture of glass for lenses, whether pink or otherwise. Other manufacturers of lenses had access to pink glass from other sources. The success of Soft-Lite stimulated emulation and competition.

35. Since 1940, Soft-Lite has entered into resale price maintenance contracts with a number of wholesalers, fixing minimum resale prices of Soft-Lite blanks to be sold by them. These contracts became an integral part of the Soft-Lite's system of distribution.

36. The defendants Bausch & Lomb Optical Company, M. Herbert Risenhart, Bon A. Ramaker, and Joseph F. Taylor have not agreed, combined and conspired among themselves or with the other defendants as alleged in the complaint.

89 *Conclusions of law*

1. The Court has jurisdiction of this cause under the Act of July 2, 1890, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

2. The defendants Soft-Lite Lens Co., Inc., Nathaniel Singer and R. G. Landis have contracted, combined, and conspired in vio-

lation of Sections 1 and 3 of the Sherman Act by restraining trade and commerce in Soft-Lite lenses.

3. The Soft-Lite distribution system constitutes an agreement, combination, and conspiracy between the above named defendants and the designated wholesalers, to boycott all retailers not licensed by Soft-Lite in violation of Sections 1 and 3 of the Sherman Act.

4. The Soft-Lite distribution system also constitutes an agreement, combination, and conspiracy between the above named defendants and the designated wholesalers to charge uniform prices to all retailer licensees in violation of Sections 1 and 3 of the Sherman Act.

5. The Soft-Lite distribution system also constitutes an agreement, combination, and conspiracy between the above-named defendants and the licensed retailers to charge arbitrary,
90 noncompetitive prices to the public in violation of Sections 1 and 3 of the Sherman Act.

6. The resale price maintenance contracts in effect between Soft-Lite and its wholesalers are an integral part of the present Soft-Lite licensing and distribution system and must be canceled and enjoined.

7. The exclusive manufacturing agreement between Bausch & Lomb and Soft-Lite is legal and valid, not in violation of the Sherman Act and forms no part of the Soft-Lite licensing and distribution system.

8. There has been no contract, combination, or conspiracy in violation of law between Bausch & Lomb and Soft-Lite as alleged in the complaint.

9. There is no evidence with respect to participation of the defendant Morris Singer in any of the activities of Soft-Lite herein found to be in violation of law.

10. The defendant Morris Singer is entitled to a decree dismissing the complaint as against him on the merits with costs as permitted by statute.

11. The defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor are entitled to a decree dismissing the complaint as against them on the merits.

91 12. Plaintiff is entitled to a decree canceling the resale price maintenance agreements and enjoining the Soft-Lite system of distribution, including the arrangements with wholesalers and canceling the licenses outstanding between Soft-Lite and retailers and enjoining the continuance of the licensing system.

Dated November 6, 1942.

(S) SIMON H. RIFKIND,
U. S. D. J.

93 In United States District Court, Southern District of New York

[Title omitted.]

Motion to make additional findings of fact

Filed Feb. 23, 1943

Pursuant to Rule 52 (b) of the Rules of Civil Procedure, the plaintiff moves the Court to make the following additional Findings of Fact, to be numbered "37" of the Findings of Fact and Conclusions of Law in this action, filed November 7, 1942:

37. Bausch & Lomb knew generally of the existence of the Soft-Lite distribution system. Bausch & Lomb also knew that its affiliated companies were among those wholesalers permitted to deal in Soft-Lite lenses and that these affiliated companies participated in the Soft-Lite distribution system.

Dated New York, N. Y., February 10, 1943.

IRVING B. GLICKFELD,
Irving B. Glickfeld,
Special Assistant to the Attorney General.

Order

Motion granted. Finding as modified made. So ordered.

S. H. RIFKIND, *D. J.*

FEB. 23, 1943.

94 In the United States District Court For the Southern District of New York

Civil Action No. 10–393

UNITED STATES OF AMERICA, PLAINTIFF

vs.

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, R. G. LANDIS and MORRIS SINGER, DEFENDANTS

Final judgment

Filed Feb. 1, 1943

This cause having come on for hearing before this Court upon the pleadings and upon the evidence, both oral and documentary,

introduced at the trial of this cause, and the same having been argued by counsel, both orally and upon briefs submitted, and the Court having filed its opinion herein on May 27th, 1942, and having likewise made and filed its Findings of Fact and Conclusions of Law, dated the 6th day of November 1942.

It Is Hereby Ordered, Adjudged, and Decreed as follows:

1. That the Court has jurisdiction of the subject matter hereof and all of the parties hereto under the Act of Congress dated July 2nd, 1890, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and the acts amendatory thereof and supplemental thereto, commonly known as the Sherman Act.

2. That the defendants Soft-Lite Company, Inc., Nathaniel Singer and R. G. Landis, hereinafter called "said defendants," in connection with the sale and distribution of Soft-Lite lenses have contracted, combined, and conspired with each other and with optical wholesalers and retailers, in violation of Section 1 and Section 3 of an Act of Congress dated July 2nd, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints
95 and Monopolies," as amended:

(a) by entering into so-called "license" agreements with optical retailers which fix the prices at which said retailers shall sell Soft-Lite lenses; (b) by entering into so-called "license" agreements with optical retailers which provide that said retailers will sell such lenses only to the public; (c) by entering into agreements with whole customers which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc.; (d) by entering into agreements with wholesale customers which fix the prices at which said wholesalers shall sell Soft-Lite lenses and blanks; (e) by entering into "Fair Trade" resale price maintenance contracts with said wholesalers as an integral part of the illegal distribution system of Soft-Lite blanks and lenses; and (f) by enforcing the agreements set forth in subdivisions (a) through (e) of this paragraph.

3. That each so-called "license" agreement, and the provisions thereof, now in effect between the defendant Soft-Lite Lens Company, Inc. and optical retailers are illegal, null, and void and that the defendant Soft-Lite Lens Company, Inc. shall forthwith cancel said "license" agreements by mailing to each such retailer and to each of the Soft-Lite wholesaler customers, within fifteen (15) days from the effective date of this Judgment, a copy of this Judgment, together with the following notice:

"Pursuant to the annexed Judgment, all existing Soft-Lite licenses and Fair Trade resale price maintenance contracts are hereby canceled."

4. That each agreement, and the provisions thereof, now in effect between the defendant Soft-Lite Lens Company, Inc. and its wholesale customers, which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc., or which fix the prices at which said wholesalers shall sell Soft-Lite lenses, are illegal, null, and void and that the defendant
96 Soft-Lite Lens Company, Inc. shall forthwith cancel said agreements by mailing to each such wholesaler within fifteen (15) days from the effective date of this Judgment a copy of this Judgment and a notice that said agreements are canceled. The mailing of copies of the Judgment and the notices required by paragraph (3) shall be deemed compliance with the notice requirements of paragraph (4).

5. Each "Fair Trade" resale price maintenance contract under the trade-marks of the Soft-Lite Lens Company, Inc. now in effect between the said defendant and its wholesale customers which fixes or purports to fix the minimum or stipulated resale price for Soft-Lite lenses, is illegal, null, and void, and that the defendant Soft-Lite Lens Company, Inc. shall forthwith cancel said contracts and give notice within fifteen (15) days from the effective date of this Judgment to its wholesale customers and to each of the retailers with whom it has entered into so-called "license" agreements that said contracts have been cancelled and are not in effect. The mailing of copies of the Judgment and the notices required by paragraph (3) shall be deemed compliance with the notice requirements of paragraph (5).

6. That the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives, and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be and they hereby are perpetually enjoined and restrained:

(a) From enforcing or attempting to enforce any so-called "license" agreement or any other existing agreement between the defendant Soft-Lite Lens Company, Inc. and any retailer which fixes the prices at which said retailer shall sell Soft-Lite lenses.

(b) From hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any retailer which fixes the prices or otherwise relates to sales by a retailer of an unpatented article of manufacture not purchased by said retailer from any of said defendants.

97 (c) From enforcing or attempting to enforce any existing contract or agreement between Soft-Lite Lens Company, Inc. and any wholesaler which provides that the said wholesaler will sell Soft-Lite lenses or blanks only to designated retailers.

(d) From hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any wholesaler which provides that the said wholesaler will sell an unpatented article of manufacture only to designated persons, firms, or corporations.

(e) From enforcing or attempting to enforce any existing agreement or contract, including "Fair Trade" Resale Price Maintenance contracts, between the defendant Soft-Lite Lens Company, Inc. and any wholesaler which fixes the prices at which said wholesaler shall sell or resell Soft-Lite lenses or blanks.

(f) From hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any wholesaler which fixes the prescription prices at which the said wholesaler shall sell lenses.

98 (g) From hereafter using serial numbers or letters on "protection certificates" or other devices which permit the tracing of sales or resales of lenses or blanks after the first sale.

(h) From entering into any understanding or agreement similar in effect or purpose to any understanding or agreement adjudged to be unlawful in paragraph (2) hereof except in so far as "Fair Trade" resale price maintenance contracts are not prohibited by paragraph (7) hereof.

7. That the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it and the defendants Nathaniel Singer and R. G. Landis be and they hereby are enjoined and restrained from executing any "Fair Trade" resale price maintenance contracts under the trade-marks of the Soft-Lite Lens Company, Inc., until six months after the notices described in paragraph (3) hereof shall have been mailed.

8. That the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it and the defendants Nathaniel Singer and R. G. Landis be and they hereby are enjoined and restrained from systematically suggesting to any person, firm or corporation, wholesale, prescription, or consumer prices on Soft-Lite lenses or blanks until six months after the notices described in paragraph (3) shall have been mailed.

9. That for the purpose of securing compliance with this Judgment, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office
99 hours of the said defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda,

and other records and documents in the possession or the control of the said defendants, or any of them, relating to any of the matters contained in this judgment, such access to be subject to any legally recognized privilege. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the said defendants, shall be permitted to interview officers or employees of said defendants without interference, restraint or limitation by said defendants; provided, however, that any such officer or employee may have counsel present at such interview. Said defendants, upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment; provided, however, that the information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

10. This Judgment shall have no effect with respect to defendants' acts and operations without the continental United States or to their acts and operations within the continental United States relating exclusively to acts without the continental United States; provided, however, that nothing in this paragraph shall be construed to permit any action which is or becomes unlawful under any existing or future law of the United States or of any political subdivision thereof.

11. That, except in so far as the Bill of Complaint herein is dismissed pursuant to paragraph (12) hereof, jurisdiction of this case is retained for the purpose of enabling the plaintiff or any of the said defendants to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, for the enforcement and compliance therewith, and for the punishment of violations thereof.

12. That the Bill of Complaint is hereby dismissed on the merits against defendants Morris Singer, Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Remaker, and Joseph F. Taylor, and no jurisdiction is retained over these defendants.

13. That the plaintiff recover from the defendants Nathaniel Singer, R. C. Landis, and Soft-Lite Lens Company, Inc., its costs

herein as taxed, in the sum of $1,014.95 and that execution issue therefor.

14. The injunction provided for hereinabove and all executory action under this Judgment shall not become effective or operative until sixty (60) days from the date of the entry of this Judgment and, in the event an appeal or cross-appeal is prosecuted by the defendants, all injunctive and executory actions provided for herein shall be stayed and suspended pending the final disposition of such appeal, conditioned upon the defendants' entering into an appeal bond in the amount of $250.

Approved:

(S) SIMON H. RIFKIND,
U. S. D. J.

Dated New York, N. Y., January 22, 1943.
Judgment rendered, February 1, 1943.

(S) GEORGE J. H. FOLLMER,
W. D. Clerk.

Filed January 23, 1943.
February 1, 1943.
Addresses. Judgment debtors (3). All—745 5th Ave.

101 In District Court of The United States for The Southern District of New York

[Title omitted.]

Petition for appeal

(Filed April 1, 1943)

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final order and decree of this Court entered on the first day of February 1943, does hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final order and decree

was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such casee made and provided.

TOM C. CLARK,
Tom C. Clark,
Assistant Attorney General

102 SAMUEL S. ISSEKS,
Samuel S. Isseks,
Special Assistant to the Attorney General.

IRVING B. GLICKFELD,
Irving B. Glickfeld,
Special Assistant to the Attorney General.

Dated this 1 day of April 1943.

103 In District Court of the United States for the Southern District of New York

[Title omitted.]

Assignment of errors and prayer for reversal

Filed April 1, 1943

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final order and judgment of said District Court on February 1, 1943, in the above-entitled cause, and says that in the entry of the final order and judgment the District Court committed error to the prejudice of the said plaintiff in the following particulars:

1. The Court erred in holding that the defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor have not unlawfully contracted, combined, and conspired among themselves and with the other defendants to restrain interstate trade and commerce in the manufacture, distribution, and sale of pink-tinted lenses and blanks in violation of Sections 1 and 3 of the Sherman Act, as alleged in the bill of complaint (Conclusion of Law No. 8).

2. The Court erred in holding that the exclusive manufacturing agreement between the defendants Bausch & Lomb Optical Company and Soft-Lite Company, Inc., considered independently is a lawful agreement and in refusing to hold that the defend-

104 ants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor, and the defendants Soft-Lite Lens Company, Inc., Nathaniel Singer and

R. G. Landis have unlawfully contracted, combined, and conspired to restrain interstate trade and commerce in the manufacture, sale, and distribution of pink-tinted lenses and blanks in violation of Sections 1 and 3 of the Sherman Act by executing and enforcing the said exclusive manufacturing agreement (Conclusion of Law No. 7).

3. The Court erred in holding that the exclusive manufacturing agreement between defendants Bausch & Lomb Optical Company and Soft-Lite Lens Company, Inc., had no connection with and formed no part of the unlawful Soft-Lite licensing and distribution system and in refusing to hold that the said agreement is an integral part of the unlawful Soft-Lite licensing and distribution system.

4. The Court erred in holding that the defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor had not unlawfully contracted, combined, and conspired to participate, and had not participated, in the establishment, operation, and maintenance of the unlawful Soft-Lite licensing and distribution system and in refusing to hold that said defendants have unlawfully contracted, combined, and conspired to participate, and have participated, in the establishment, operation, and maintenance of the unlawful Soft-Lite licensing and distribution system (Finding of Fact 32).

5. The Court erred in refusing to hold that the defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor had violated Sections 1 and 3 of the Sherman Act by contracting, combining, and conspiring, directly and through their affiliated wholesale companies, to do the following:

105

(a) To confine the sale of Soft-Lite lenses and blanks to optical wholesalers and retailers who were designated and selected according to arbitrary rules and regulations;

(b) To prevent such designated and selected wholesalers and retailers from selling Soft-Lite lenses and blanks to wholesalers and retailers not so designated and selected.

(c) To fix the prices at which said selected and designated wholesalers and retailers could handle and sell Soft-Lite lenses and blanks.

6. The Court erred in holding that the main purpose of the exclusive manufacturing agreement was to provide a source of supply for Soft-Lite and that the restraining covenant was merely ancillary to that purpose, and that therefore the exclusive manufacturing agreement was not in violation of Sections 1 and 3 of the Sherman Act.

7. The Court erred in refusing to hold that the restrictive provisions in the manufacturing agreement between defendants

Bausch & Lomb Optical Company and Soft-Lite Lens Company, Inc., were unlimited in time and space and constituted a covenant that unreasonably restrained trade.

8. The Court erred in refusing to find that defendant Bausch & Lomb, for the purpose of maintaining the unlawful Soft-Lite licensing and distribution system and protecting sales of Soft-Lite blanks and lenses from competition, changed the exclusive manufacturing agreement with Soft-Lite Lens Company, Inc., by:

106 Selling pink-tinted Soft-Lite glass, during 1938, to the defendant Soft-Lite Lens Company, Inc., for resale to two lens manufacturers in England, with knowledge of the terms of contracts by which the English manufacturers agreed that, in consideration of the resale of such glass, they would not ship or sell pink-tinted blanks or lenses to anyone in the United States;

(b) Agreeing with the defendant Nathaniel Singer that any manufacturing license issued by defendant Bausch & Lomb's subsidiary, Panoptik Company, Inc., under the Panoptik bifocal lens patents (Panoptik lenses can be constructed of either white or pink-tinted glass) would require the licensee to sell Panoptik lenses and blanks manufactured by it of pink-tinted glass at prices not less than those established for Panoptik Soft-Lite lenses and blanks, and that such agreement was thereafter observed by Bausch & Lomb.

(c) Specifying, in manufacturing licenses issued by it under its Nokrome bifocal lens patents (Nokrome lenses can be constructed of either white or pink-tinted glass), that the licensees sell Nokrome lenses and blanks manufactured by them of pink-tinted glass at prices not less than those established for Nokrome Soft-Lite lenses and blanks.

9. The Court erred in refusing to find that the execution of the exclusive manufacturing agreement between Bausch

107 & Lomb Optical Company and Soft-Lite Lens Company, Inc., was based upon an understanding that the prices and distribution of Soft-Lite lenses and blanks would be controlled.

10. The Court erred in refusing to hold that the failure of the defendants to call as witnesses defendant Eisenhart or Messrs. Byrne, Buedingen, or Hubbell to rebut the testimony of Mr. Wahlgren, a witness for the plaintiff (which testimony was to the effect that the execution of the exclusive manufacturing agreement was based upon an understanding that the prices and distribution of Soft-Lite lenses and blanks would be controlled), raised a presumption that if these persons had been called to testify their testimony would not have contradicted that of Mr. Wahlgren.

11. The Court erred in finding that defendant Bausch & Lomb Optical Company, directly and through its affiliated wholesale

companies, had not agreed with defendant Soft-Lite Lens Company, Inc., with respect to the selection and rejection of, and the discontinuance of relations with, wholesalers and retailers handling and selling Soft-Lite lenses and blanks, and had not participated in the unlawful Soft-Lite licensing and distribution system.

12. The Court erred in refusing to find that it was necessary to have the defendant Bausch & Lomb Optical Company's approval before a person or a company could be selected and designated as a Soft-Lite wholesaler.

13. The Court erred in refusing to find that defendant Bausch & Lomb Optical Company did not consider "Ray Ban," a green-tinted lens, competitive to Soft-Lite lenses.

108 14. The Court erred in sustaining an objection to a question asked of defendant Nathaniel Singer and in refusing to permit defendant Nathanial Singer to testify concerning what consideration was paid by Mr. Wahlgren for Soft-Lite stock he received in 1926.

15. The Court erred in striking out testimony by Mr. Wahlgren that he suggested to Mr. Hubbell, president of White-Haines Optical Company, which became an affiliate of defendant Bausch & Lomb Optical Company, that he and Mr. Hubbell attempt to influence defendant Bausch & Lomb Optical Company to supply glass, lenses and blanks to defendant Soft-Lite Lens Company, Inc.

16. The Court erred in striking out testimony by Mr. Wahlgren and in refusing to permit Mr. Wahlgren to testify concerning conversations he had with his branch managers relating to consumer prices on Soft-Lite lenses and blanks.

17. The Court erred in striking out testimony by Mr. Arnold and in refusing to permit Mr. Arnold to testify concerning conversations he heard the defendant Nathanial Singer have with Mr. Arnold's customers in 1924.

18. The Court erred in sustaining an objection to the introduction in evidence of Government's Exhibit 8, marked for identification.

19. The Court erred in sustaining an objection to the introduction in evidence of Government's Exhibit 147, marked for identification.

20. The Court erred in sustaining an objection to the introduction in evidence of Government's Exhibit 148, marked for identification.

109 21. The Court erred in refusing to enjoin defendant Soft-Lite Lens Company, Inc., and its officers from engaging in interstate commerce unless said defendant agrees to

sell Soft-Lite lenses and blanks to any person, firm, or corporation who offers and is willing to pay cash therefor and to fill and otherwise handle the order of such person or company without discriminating against him or it.

22. The Court erred in refusing to enter a final judgment permanently enjoining defendant Soft-Lite Lens Company, Inc., and its officers from systematically suggesting resale prices for Soft-Lite blanks and lenses.

23. The Court erred in refusing to enter a final judgment permanently enjoining defendant Soft-Lite Lens Company, Inc., and its officers from executing "fair trade" resale price maintenance contracts under the trademarks of Soft-Lite Lens Company, Inc.

24. The Court erred in entering the final order and judgment dismissing the complaint against the defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor, and in refusing to enter a final order annulling and enjoining the exclusive manufacturing agreement between defendants Bausch & Lomb Optical Company and Soft-Lite Lens Company, Inc., dissipating the effects of such agreement, enjoining defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, Joseph F. Taylor, Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis from enforcing, continuing, or reviving the exclusive manufacturing agreement or any other scheme to accomplish the same purposes, and enjoining the defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor from participating in, enforcing, continuing, or reviving the unlawful Soft-Lite licensing and distribution system or any other scheme to accomplish the same purpose.

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25. The Court erred in failing to enter such order or orders with respect to the unlawful Soft-Lite licensing and distribution system and the oral and written agreements between defendant Soft-Lite Lens Company, Inc., and its wholesalers and retailers and the exclusive manufacturing agreement between defendants Bausch & Lomb Optical Company and Soft-Lite Lens Company, Inc., as were and are consistent with right and justice within the laws of the United States.

Wherefore, plaintiff prays that the final order and judgment of the District Court dismissing the complaint as to the defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor, denying relief as to the exclusive manufacturing agreement between the defendants Bausch & Lomb Optical Company and Soft-Lite Lens Company, Inc., and denying relief necessary for the dissipation of the ef-

fects of the unlawful Soft-Lite licensing and distribution system may be reversed, and for such other and fit relief as the Court may deem just and proper.

TOM C. CLARK,
Tom C. Clark,
Assistant Attorney General.

SAMUEL S. ISSEKS,
Samuel S. Isseks,
Special Assistant to the Attorney General.

IRVING B. GLICKFELD,
Irving B. Glickfeld,
Special Assistant to the Attorney General.

This 1 day of April 1943.

111 In District Court of the United States for the Southern District of New York

[Title omitted.]

Order Allowing Appeal

Filed April 1, 1943

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the first day of February 1943; and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjuged

That the appeal be and the same is hereby allowed as prayer for.

SIMON H. RIFKIND,
Simon H. Rifkind,
United States District Judge.

Dated this 1st day of April 1943.

112 In District Court of the United States for the Southern District of New York

[Title omitted.]

**Petition for appeal, assignment of errors, &c.*

Considering themselves aggrieved by the final decree of this Court entered February 1, 1943, wherein and whereby the bill of

complaint was in part sustained as against the defendants Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis, and said defendants held to have violated in certain respects Sections 1 and 3 of the Act of Congress approved July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, and an injunction decreed against said defendants, and said defendants taxed costs, said defendants Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis jointly and severally do hereby pray that an appeal be allowed to the Supreme Court of the United States and that the appeal bond in the amount of two hundred and fifty dollars ($250.00) as fixed in the final decree appealed from, tendered by said defendants-appellants, be approved by this Court.

113 The Supreme Court of the United States has jurisdiction of this appeal under the provisions of Judicial Code, Section 238, as amended, 28 U. S. C. § 345 (1940); 32 Stat. 823 (1903), 36 Stat. 1167 (1911), 15 U. S. C. § 29 (1940); United States v. Univis Lens Co., Inc. et al., 316 U. S. 241 (1942); Ethyl Gasoline Corporation et al. v. United States, 309 U. S. 436 (1940); Interstate Circuit, Inc., et al. v. United States, 306 U. S. 208 (1939).

Assignment of errors

And the said defendants Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis jointly and severally assign the following errors in the record and proceedings in said cause, to wit:

1. The Court erred in holding and decreeing that the defendants Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis, hereinafter called "said defendants," in connection with the sale and distribution of Soft-Lite lenses have contracted, combined, and conspired with each other and with optical wholesalers and retailers, in violation of Section 1 and Section 3 of an Act of Congress dated July 2nd, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," as amended: (a) by entering into so-called "license" agreements with optical retailers which fix the prices at which said retailers shall sell Soft-Lite lenses; (b) by entering into so-called "license" agreements with optical retailers which provide that said retailers will sell such lenses only to the public; (c) by entering into agreements with wholesale customers which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who

114 are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc.; (d) by entering into agreements with wholesale customers which fix the prices at which said wholesalers shall sell Soft-Lite lenses and blanks; (e) by entering into "Fair Trade" resale price maintenance contracts with said whole-

salers as an integral part of the illegal distribution system of Soft-Lite blanks and lenses; and (f) by enforcing the agreements set forth in subdivisions (a) through (e) of this paragraph. (See paragraph "2" of the final decree herein.)

2. The Court erred (a) in holding and decreeing that each so-called "license" agreement, and the provisions thereof, now in effect between the defendant Soft-Lite Lens Company, Inc., and optical retailers are illegal, null and void and (b) in directing that the defendant Soft-Lite Lens Company, Inc., shall forthwith cancel said "license" agreements by mailing to each such retailer and to each of the Soft-Lite wholesaler customers, within fifteen (15) days from the effective date of said Judgment, a copy of the Judgment, together with the following notice:

"Pursuant to the annexed Judgment, all existing Soft-Lite licenses and Fair Trade resale price maintenance contracts are hereby cancelled."

(See paragraph "3" of the final decree herein.)

3. The Court erred (a) in holding and decreeing that each agreement, and the provisions thereof, now in effect between the defendant Soft-Lite Lens Company, Inc., and its wholesale customers, which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc., or which fix the prices at which said wholesalers shall sell Soft-Lite lenses, are illegal, null and void and (b) in directing that the defendant Soft-Lite Lens Company, Inc., shall forthwith
115 cancel said agreements by mailing to each such wholesaler within fifteen (15) days from the effective date of the Judgment a copy of said Judgment and a notice that said agreements are canceled. (See paragraph "4" of the final decree herein.)

4. The Court erred (a) in holding and decreeing that each "Fair Trade resale price maintenance contract under the trade-marks of the Soft-Lite Lens Company, Inc., now in effect between the said defendant and its wholesale customers which fixes or purports to fix the minimum or stipulated resale price for Soft-Lite lenses, is illegal, null and void, and (b) in directing that the defendant Soft-Lite Lens Company, Inc., shall forthwith cancel said contracts and give notice within fifteen (15) days from the effective date of the Judgment to its wholesale customers and to each of the retailers with whom it has entered into so-called "license" agreements that said contracts have been canceled and are not in effect. (See paragraph "5" of the final decree herein.)

5. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, repre-

sentatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from enforcing or attempting to enforce any so-called "license" agreement or any other existing agreement between the defendant Soft-Lite Lens Company, Inc., and any retailer which fixes the prices at which said retailer shall sell Soft-Lite lenses. (See paragraph "6", subparagraph "(a)" of the final decree herein.)

6. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers,
116 agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from enforcing, making, attempting to make, or attempting to enforce, any contract or agreement with any retailer which fixes the prices or otherwise relates to sales by a retailer of an unpatented article of manufacture not purchased by said retailer from any of said defendants. (See paragraph "6," subparagraph "(b)" of the final decree herein.)

7. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from enforcing or attempting to enforce any existing contract or agreement between Soft-Lite Lens Company, Inc., and any wholesaler which provides that the said wholesaler will sell Soft-Lite lenses or blanks only to designated retailers. (See paragraph "6," subparagraph "(c)" of the final decree herein.)

8. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any wholesaler which provides that the said wholesaler will sell an unpatented article of manufacture only to designated persons, firms, or corporations. (See paragraph "6," subparagraph "(d)" of the final decree herein.)

117 9. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be

perpetually enjoined and restrained from enforcing or attempting to enforce any existing agreement or contract, including "Fair Trade" Resale Price Maintenance Contracts, between the defendant Soft-Lite Lens Company, Inc. and any wholesaler which fixes the prices at which said wholesaler shall sell or resell Soft-Lite lenses or blanks. (See paragraph "6," subparagraph "(e)" of the final decree herein.)

10. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any wholesaler which fixes the prescription prices at which the said wholesaler shall sell lenses. (See paragraph "6," subparagraph "(f)" of the final decree herein.)

11. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from hereafter using serial numbers or letters on "protection certificates" or other devices which permit the tracing of sales or resales of lenses or blanks after the first sale. (See paragraph "6," subparagraph "(g)" of the
118 final decree herein.)

12. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be perpetually enjoined and restrained from entering into any understanding or agreement similar in effect or purpose to any understanding or agreement adjudged to be unlawful in paragraph (2) of the final decree except in so far as "Fair Trade" resale price maintenance contracts are not prohibited by paragraph (7) of the final decree. (See paragraph "6," subparagraph "(h)" of the final decree.)

13. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it and the defendants Nathaniel Singer and R. G. Landis be and they hereby are enjoined and restrained from executing any "Fair Trade" resale price maintenance contracts under the trade-marks of the Soft-Lite Lens Company, Inc., until six months after the notices

described in paragraph (3) of the final decree, shall have been mailed. (See paragraph "7" of the final decree herein.)

14. The Court erred in holding and decreeing that the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries, and any person acting or claiming to act through or for it and the defendants Nathaniel Singer and R. G. Landis be and they hereby are enjoined and restrained from systematically suggesting
119 to any person, firm or corporation, wholesale, prescription, or consumer prices on Soft-Lite lenses or blanks until six months after the notices described in paragraph (3) of the final decree shall have been mailed. (See paragraph "8" of the final decree herein.)

15. The Court erred in holding and decreeing that for the purpose of securing compliance with the Judgment, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in the Judgment, such access to be subject to any legally recognized privilege; that any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview; and that the defendants, upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in the Judgment as from time to time may be necessary for the purpose of enforcement of the Judgment; provided, however, that the information obtained by the means permitted shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law. (See paragraph "9" of the final decree herein.)

120 16. The Court erred in holding and decreeing that jurisdiction of this case is retained for the purpose of enabling the plaintiff or any of the defendants to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Judgment, for the modification or termination of any of the provisions thereof, for the enforcement and compliance therewith.

and for the punishment of violations thereof. (See paragraph "11" of the final decree herein.)

17. The Court erred in holding and decreeing that the plaintiff recover from the defendants Nathaniel Singer, R. G. Landis, and Soft-Lite Lens Company, Inc., its costs herein as taxed, in the sum of $1,014.98 and that execution issue therefor. (See paragraph "13" of the final decree herein.)

18. The Court erred in its Finding of Fact, number 17, that by the establishment, operation, and enforcement of its licensing system, the defendant Soft-Lite Lens Company, Inc., since 1939, has exercised control over the prices to be charged by optical wholesalers and retailers for Soft-Lite lenses.

19. The Court erred in its Finding of Fact, number 25, that Soft-Lite designated to the wholesalers the prices to be received by them from the retailers by means of published price lists.

20. The Court erred in its Finding of Fact, number 26, that Soft-Lite and its wholesalers did exert regulatory forces upon the prices paid by consumers; that Soft-Lite required retailers to sell its lenses at a premium over comparable untinted lenses.

121 21. The Court erred in its finding of fact, number 35, that since 1940, Soft-Lite has entered into resale price maintenance contracts with a number of wholesalers, fixing minimum resale prices of Soft-Lite blanks to be sold by them and that these contracts became an integral part of the Soft-Lite's system of distribution.

22. The Court erred in its conclusion of law, number 2, that the defendants Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis have contracted, combined, and conspired in violation of Sections 1 and 3 of the Sherman Act by restraining trade and commerce in Soft-Lite lenses.

23. The Court erred in its conclusion of law, number 3, that the Soft-Lite distribution system constitutes an agreement, combination, and conspiracy between the above-named defendants and the designated wholesalers, to boycott all retailers not licensed by Soft-Lite in violation of Sections 1 and 3 of the Sherman Act.

24. The Court erred in its conclusion of law, number 4, that the Soft-Lite distribution system also constitutes an agreement, combination, and conspiracy between the above-named defendants and the designated wholesalers to charge uniform prices to all retailer licenses in violation of Sections 1 and 3 of the Sherman Act.

25. The Court erred in its conclusion of law, number 5, that the Soft-Lite distribution system also constitutes an agreement, combination, and conspiracy between the above-named defendants and the licensed retailers to charge arbitrary, noncompetitive prices to the public in violation of Sections 1 and 3 of the Sherman Act.

122 26. The Court erred in its conclusion of law, number 6, that the resale price maintenance contracts in effect between Soft-Lite and its wholesalers are an integral part of the present Soft-Lite licensing and distribution system and must be canceled and enjoined.

27. The Court erred in its conclusion of law, number 12, that the plaintiff is entitled to a decree canceling the resale price maintenance agreements and enjoining the Soft-Lite system of distribution, including the arrangements with wholesalers and retailers and canceling the licenses outstanding between Soft-Lite and retailers and enjoining the continuance of the licensing system.

28. The Court erred in overruling the motion to dismiss the complaint of Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis.

29. The Court erred in failing to find, hold and decree that the Fair Trade Resale Price Maintenance Contracts in effect between Soft-Lite Lens Company, Inc., and its wholesalers are valid, binding, and legal, as coming within the provisions of the Millard-Tydings Amendment of the Act of July 2nd, 1890.

30. The Court erred in failing to find, hold, and decree that the Resale Price Maintenance Contracts in effect between the Soft-Lite Lens Company, Inc., and its wholesalers are not an integral part of the present Soft-Lite licensing and distribution system.

123 *Prayer for reversal*

For which errors the defendants, Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis pray that those portions of the decree of the District Court of the United States for the Southern District of New York entered February 1, 1943, in the above entitled cause, holding that said defendants or any of them have been guilty of any violation of law, and particularly violations of Sections 1 and 3 of the Act of July 2, 1890, be reversed and the bill of complaint dismissed; that the appeal bond tendered by said defendants in the sum of Two hundred and fifty dollars ($250.00) be approved; that citation issue to the United States of America; and for such other and further relief as said defendants-appellants may be entitled.

Respectfully submitted,

Dated New York, N. Y., April 1, 1943.

LEHRICH AND LEHRICH,
Attorneys for defendants-appellants above named.
By HYMAN D. LEHRICH,
A member of said firm.

(Note: Bond for $250.00 costs duly filed.)

124 IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted.]

Order allowing appeal

April 1, 1943.

The defendants-appellants Soft-Lite Lens Company, Inc., Nathaniel Singer, and R. G. Landis, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree entered in the above-entitled cause by the District Court of the United States for the South District of New York on February 1, 1943, and having presented and filed their petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction pursuant to the Statutes of the United States and the Rules of the Supreme Court in such case made and provided;

It is ordered that an appeal be, and the same hereby is, allowed to the Supreme Court of the United States from the District Court of the United States for the Southern District of New York in the above-entitled cause as provided by law; and

It is further ordered that the Clerk of the District Court of the United States for the Southern District of New York shall prepare and certify a transcript of the record, proceedings,
125 and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days of this date; and

It is further ordered that security for costs on appeal be fixed in the sum of Two hundred and fifty dollars ($250.00) as provided in paragraph 14 of the final decree appealed from, and that the bond in said amount tendered by said defendants-appellants be and hereby is approved.

Dated New York, N. Y., April 1, 1943.

SIMON H. RIFKIND,
District Judge of the United States
for the Southern District of New York.

126 [Citations in usual form omitted in printing.]

128 In United States District Court, Southern District of New York

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated May 10, 1943.

SAMUEL S. ISSEKS,
By IRVING B. GLICKFELD,
Attorney for United States of America.
SIMPSON, THACHER & BARTLETT,
Attorneys for Bausch & Lomb Optical Co. et al.

Attorney for Soft-Lite Lens Company, Inc.

129 [Clerk's certificate to foregoing transcript omitted in printing.]

1 In United States District Court, Southern District of New York

Civ. 10-393

UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, R. G. LANDIS AND MORRIS SINGER, DEFENDANTS.

Statement of evidence

Before Hon. SIMON H. RIFKIND, District Judge

NEW YORK, *September 16, 1941;*
10:30 o'clock, a. m.

Appearances

Samuel S. Isseks, Esq., Special Assistant to the Attorney-General; Irving Glickfeld, Esq., Special Attorney; John E.

McCracken, Esq., Special Attorney; John S. James, Esq., Special Attorney for the Government. Simpson, Thacher & Bartlett, Esqrs., Attorneys for Defendants Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker and Joseph F. Taylor; Whitney N. Seymour, Esq., and Francis X. Fallon, Jr., Esq., of Counsel. Lehrich & Lehrich, Esqrs., Attorneys for Defendants Soft-Lite Lens Company, Inc., Nathaniel Singer, R. G. Landis and Morris Singer; Henry Lehrich, Esq., Benjamin S. Kirsch, Esq., and Hyman L. Lehrich, Esq., of Counsel.

2 *Government's Case*

Mr. ISSEKS. Your Honor, the Government calls as its first witness Mr. Nat Singer—unless your Honor cares for an opening statement, and I assume——

The COURT. I leave that entirely to counsel.

Mr. ISSEKS. The Government does not prefer to make an opening statement in view of the briefs submitted to your Honor.

The COURT. Very well, you may proceed to examine your first witness.

NATHANIEL SINGER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. ISSEKS:

Q. Mr. Singer, with what company are you connected?—A. Soft-Lite Lens Company.

Q. And how long have you been connected with that company?—A. Since its inception.

Q. And what was the date it was organized?—A. The Soft-Lite Lens Company was organized in 1929.

Q. Prior to your connection with the Soft-Lite Lens Company with what company were you connected?—A. Optical Service Corporation.

Q. How long were you connected with that company?—A. Since its inception.

3 Q. What year was that?—A. 1922.

Q. The Soft-Lite Lens Company took over the business, did it not, of the Optical Service Corporation?—A. It did.

Q. What duties did you have with the Optical Service Corporation?—A. I was president, general manager; handled sales.

Q. And what are your duties with the Soft-Lite Lens Company?—A. President and general manager.

Q. What was the nature of the business of the Optical Service Corporation when it was first organized?—A. Selling of Soft-Lite lenses.

Q. To whom?—A. To the trade.

Q. And what do you consider the trade?—A. Wholesalers.

Q. Originally?—A. Yes.

Q. And were you in any business prior to your connection with the Optical Service Corporation?—A. I worked for my father.

Q. What was his business?—A. Retail optical business.

Q. Where was that located?—A. New York City.

Q. What was the name of that business?—A. M. Singer.

Q. Did they have more than one retail shop?—A. They had half a dozen retail establishments.

Q. I notice in the briefs counsel submitted you went to law school?—A. I did, sir.

Q. And what school was that?—A. Columbia Law School.

Q. How long was that?—A. I went there for two years.

4 Q. Didn't you get a degree?—A. No.

Q. Who were the original stockholders of the Optical Service Corporation?—A. My father and I.

Q. And did there come a time when there were additional stockholders?

Mr. SEYMOUR. If your Honor pleases, on behalf of the Bausch & Lomb defendants I object to this testimony if it is offered against all of the defendants. I do not see how it could possibly be competent or material as far as the Bausch & Lomb defendants are concerned.

The COURT. I am trying to ascertain now how it would bear on the issue in any respect.

Mr. ISSEKS. Your Honor, I want to show the background of the corporation; because a time will come—counsel has anticipated me—when two people became stockholders who were connected with the affiliates. And a time will come, your Honor, when there were conversations between this witness and these representatives of the not then affiliates and the Bausch & Lomb people.

The COURT. Very well, I will allow it.

Mr. SEYMOUR. Exception.

The COURT. Subject to connection, in all of these cases—which sometimes do not work out.

Mr. SEYMOUR. I assume my objection may be regarded as continuing and that the testimony will be taken subject to

5 motion to strike.

The COURT. You can always make a motion to strike. I do not like continuing objections, because I think I ought to have my attention called to it when I am expected to rule. But, after all, we haven't got a jury in the box, and you can preserve all your rights by motion to strike at the appropriate time. You may proceed.

(The question was read as follows:

"Q. And did there come a time when there were additional stockholders?")

Q. (Continued.) Of the Optical Service Corporation?—A. Yes.

6 Q. Who were they, please?

Mr. SEYMOUR. If your Honor please, the question of stock ownership of Optical Service Corporation certainly without fixing some date material to the issues is wholly irrelevant and immaterial.

The COURT. Yes, I think he ought to state a time.

Q. About what time did these other gentlemen, the persons mentioned, become stockholders?—A. About 1923 to 1925.

Q. Did it have some relationship in time with your first arrangement with Bausch & Lomb?—A. None whatsoever.

Q. In time?—A. None whatsoever.

Q. Wasn't it around 1924?—A. How is that?

Q. 1924.

The COURT. Why don't you develop the facts as to time and let the Court or any other trier of the facts draw the inferences.

Mr. LEHRICH. I have the exact date here, I think.

The COURT. If you can stipulate the dates, let us eliminate uncertainty as much as possible.

Mr. ISSEKS. We tried to get a stipulation to a number of matters but we were unsuccessful.

Mr. LEHRICH. I do not think that is a fair statement, your Honor.

7 The COURT. If you have the date and there is no dispute about that, let us get it on the record without further ado.

Mr. LEHRICH. I withdraw that offer. I find I cannot furnish that to him.

Q. You said some time between 1923 and 1925. I will take that subject to correction. Who were these gentlemen or persons?

Mr. SEYMOUR. I object to it as irrelevant and immaterial and incompetent as against Bausch & Lomb.

The COURT. I will allow it.

Mr. SEYMOUR. Exception.

A. Why, the stockholders of record were my father and I, and then I divided part of my minority holdings I think with two of my attorneys.

Q. Who were they?—A. One was my brother-in-law, Mr. S. C. Coleman, who was the attorney, and the other was an attorney, Morris Schaefer.

Q. Who were the other people who had beneficial interests?—A. Roy Walgren and Dan Hubbell.

Q. You knew who I was asking for when I asked for the beneficial owners?—A. You did not use the words, so I did not understand.

Q. Who was Mr. Roy Walgren?—A. An optical man.

Q. At that time, I know, but what company was he connected with?—A. President—I don't know whether he was the
8 president or general manager of the Riggs Optical Company of Omaha.

Q. So there won't be any confusion, the Riggs Optical Company later on became an affiliate of Bausch & Lomb?—A. That is a matter of record.

Q. Please, sir. The question is answered yes or no.—A. Yes.

Q. As far as you know, a time came when the Riggs Optical Company, with Mr. Walgren as an executive, became one of the affiliates of Bausch & Lomb?

Mr. SEYMOUR. If your Honor please, you will have perhaps some further questions which will raise the same problems in this case, but I submit there is absolutely no basis in this case for inquiring into questions of affiliation or anything of the kind, and I therefore object to this question as incompetent, irrelevant and immaterial on behalf of my defendants. There is no allegation in the complaint with respect to the affiliates except an allegation that certain companies affiliated with Bausch & Lomb who bought certain Soft-Lite lenses, and a general inquiry along these lines as to the facts of affiliation or things of that kind it seems to me is wholly irrelevant and immaterial.

The COURT. We are still in the preliminary stages, which
9 he is now giving us, as I gather. The complaint does allege a general conspiracy in restraint of trade, and he is identifying the location in the trade of these various people. I think when we get into the territory you are fearful of, and I do not mean fearful in any sense except that you feel it is beyond the scope of this complaint, you can interpose your objection at that time again. For the present I will overrule it.

Mr. SEYMOUR. Exception.

The COURT. I would like to get the time relationship, Mr. Isseks.

Mr. ISSEKS. I would like to, thank you, your Honor.

Q. You have testified that between 1923 and 1925 you gave these beneficial interests to Mr. Walgren and Mr. Hubbell?—A. That is right.

Q. Mr. Hubbell was who?—A. The general manager of White-Haines.

Q. Riggs and White-Haines at that time, the time you gave them the beneficial interest, were wholesale optical houses, were they not?—A. Yes, sir.

Q. They were not at that time, as far as you knew, connected with Bausch & Lomb in any way?—A. That is true.

Q. But some time later you learned they became affiliated with Bausch & Lomb—both companies?—A. Yes, sir.

10 Q. Now the Court and I would like to know the date, approximately, when that affiliation went into effect, as far as you know.

The COURT. That is not the question I wanted to know. I wanted to know the relationship in time when they became beneficial owners and the date of affiliation. I would like to know which was first and which was second and that is all. If you want to pursue any other inquiry go on, but don't impose it on me.

Mr. ISSEKS. I am sorry, your Honor. I misunderstood you.

Q. When, approximately, did you give these gentlemen the stock interest?—A. I say it was closer to 1925 than any other time.

Q. When?—A. Or 1924. I am not sure; really.

Q. The books will show it, the books of your company?—A. I am not sure.

Q. Wouldn't they show when these two relatives of yours became stockholders of record?—A. One a relative and one a friend.

Q. Yes, Mr. Coleman, and you mentioned another gentleman?—A. Yes; and Mr. Schaefer, or Kaplan, I am not sure.

Q. When, do you know or recall, did these two companies become affiliated with Bausch & Lomb, the approximate dates?—A. I would say about 1929 or 1927.

11 Mr. SEYMOUR. I object to that and move to strike out the answer as clearly incompetent. The witness's knowledge is wholly irrelevant. The question certainly calls for a legal conclusion.

Mr. ISSEKS. I ask counsel to stipulate the date.

The COURT. Can you gentlemen stipulate when this affiliation took place. If not, I will allow the question.

Mr. SEYMOUR. I think subject to objection; yes.

The COURT. Yes; you can reserve your objection to the relevance, but let us not have any dispute whether this witness is or is not competent to tell us when a merger or acquisition took place.

Mr. SEYMOUR. Subject to objection as to relevancy and materiality I am prepared to stipulate that Riggs Optical Company became affiliated with Bausch & Lomb in 1925; the White-Haines Optical Company became affiliated with Bausch & Lomb in 1928. Do you want——

Mr. ISSEKS. I will take the others. We are going to get into the others before we are through.

The COURT. Go ahead.

Mr. SEYMOUR. The Southeastern Optical Company became affiliated with Bausch & Lomb in 1929; McIntyre, Magee & Brown,

became affiliated in 1930 and the Colonial Optical Company became affiliated in 1932.

Mr. ISSEKS. Thank you, sir.

12 Q. Now in 1925, when you gave these gentlemen, Mr. Walgren and Mr. Hubbell, part of your stock interest, those two companies you testified were wholesale optical houses, namely, Riggs and White-Haines?—A. Yes.

Q. Now as a distributor of Soft-Lite lenses, what was your information as to whether or not they were the largest two optical houses in the country?

Mr. SEYMOUR. I object to that as incompetent, irrelevant and immaterial.

The COURT. Overruled.

Mr. SEYMOUR. Exception.

A. They were two of the leading quality wholesale houses of the country.

Q. What consideration, if any, was paid to you or to your corporation by Mr. Walgren when you gave him some portion of your stock interest?

Mr. LEHRICH. I object to that. Certainly that is not material.

The COURT. What is the relevance of that, Mr. Isseks?

Mr. ISSEKS. Your Honor, I am coming in the next question to what transpired between Bausch & Lomb and these two gentlemen that got the stock interest.

The COURT. What difference does it make whether it was given for a price or for nothing?

Mr. ISSEKS. I think it may have a bearing, your Honor,

13 but I won't press the question if your Honor thinks not.

The COURT. I will sustain the objection.

Mr. ISSEKS. May I at some other time reopen it?

The COURT. Yes, certainly; if you can show me its relevance on the state of the evidence at that time.

Q. Your company, the Optical Service Corporation, you testified was distributing Soft-Lite lenses?—A. Yes, sir.

Q. Where originally did your company get the glass from which the Soft-Lite lenses were made?—A. France.

Q. And the Soft-Lite lens was a tinted lens, was it not?—A. Yes, sir.

Q. Rose-tinted lens?—A. Yes, sir.

Q. Who fabricated, if I may use that word, the glass into a lense when you were importing the glass from France?—A. It was manufactured for us by a number of companies; the American Optical Company did some of the grinding initially for my father; the One-Piece Bifocal Lens Company made Ultex Bifocals and some finished lens blanks out of our glass; Simpson. Walther Lens Company ground Miniscus for us; Phillips Worth

Lens Company ground Miniscus for us; Quality Lens Company made Torics for us; General Optical Company fused some bifocals for us; Bausch & Lomb Optical Company fused some bifocals for us and ground some lenses for us in single vision.

14 Q. All these companies doing it at the same time?—A. At various times.

Q. Approximately how much business annually was your company doing? By "your company" I mean the Optical Service Corporation, at the period of time when these other companies at various times collectively or individually were manufacturing your Soft-Lite lenses.

Mr. LEHRICH. I object, if your Honor please, because the question is obviously too general. I do not know what "various times" means.

The COURT. I think you ought to specify a year.

Mr. LEHRICH. A year; yes.

Mr. ISSEKS. 1923.

A. Well, I do not know exactly what we did at that time.

Q. Have you got an approximate figure?—A. We have all the figures on the card. I can get the card and give them to you.

Q. Fine.

Mr. ISSEKS. We will go ahead, your Honor, if I may. It seems to me we can get it later on.

The COURT. Certainly

Q. You want to try to refresh your recollection?—A. Well, I will say we started business in 1922 and we did a very small amount of business then compared to now.

15 Q. I want to figure. You do not have any figures?—A. I can give you the figures for these years, but not ten or 15 years ago.

The COURT. There is a record?

The WITNESS. Of course, there is a record.

Q. There is a card that counsel hands me [handing to witness], and it shows for 1922 a figure of what?—A. 12,000 units.

Q. How much in dollar value?—A. $32,000.

Q. Is that dollars to your company?—A. Yes.

Q. To your company?—A. Yes.

The COURT. Is that gross sales?

Mr. ISSEKS. Gross sales.

Q. $32,000, you say?—A. Yes.

Q. What is the 1923?—A. $18,000.

Q. What is the 1924?—A. $59,000.

Mr. ISSEKS. I am going to delay asking questions about that, if I may. Although I think it may be a good thing to offer this document in evidence.

Q. Is that a record of the sales?—A. Yes; it is my record.

Q. It is taken from the books?

Mr. LEHRICH. Your Honor, that is a transcript from our books, and I have no objection to them offering it in evidence. However, it was prepared to refresh the witness's recollection.

16 Mr. ISSEKS. There is no doubt about it.

The COURT. Is there any dispute about these figures?

Mr. LEHRICH. No.

The COURT. Why can't you stipulate the figures and put them into the record?

Mr. ISSEKS. Fine: I have never seen them, your Honor, but have no objection.

The COURT. Do you want to read them into the record now, or how do you want to do it?

Mr. ISSEKS. I will read them into the record now.

The COURT. Go ahead.

The WITNESS. Dollar value, starting in 1922, and taking each following: $32,000, $18,000, $59,000, $234,000, $234,000, $303,000, $417,000, $559,000, $580,000, 1931; it was $499,000, $371,000, $363,000, $585,000, $681,000, $766,000, $891,000, $807,000, $910,000, $987,000 in 1940.

Q. May I have that card?—A. Yes [handing to counsel].

Mr. ISSEKS. We might as well have the back of the card, too, your Honor.

The COURT. I do not know what it is.

Mr. ISSEKS. I will ask the witness what it is.

The COURT. What is it?

Mr. ISSEKS. I will ask the witness what it is.

The WITNESS. What we paid to Bausch & Lomb.

17 Mr. SEYMOUR. I object to that as immaterial. What possible bearing can the payments to Bausch & Lomb have on the case? The other is of doubtful bearing, but it seems to me that the amount paid to Bausch & Lomb cannot possibly bear on the issues here.

The COURT. Is there any relevance to that?

Mr. ISSEKS. Your Honor, this case charges conspiracy. We claim that Bausch & Lomb and Soft-Lite conspired to mulct the public, and this shows how they mulcted them.

The COURT. Is there any issue in this case as to whether Soft-Lite used Bausch & Lomb after a certain time as its sole supplier?

Mr. ISSEKS. But this is relevant, your Honor, because we claim that Bausch & Lomb with the Soft-Lite Company worked out this plan whereby the public paid so much.

The COURT. Very well, I will allow the answer.

Mr. SEYMOUR. Exception.

The WITNESS. In 1924 we paid Bausch & Lomb $37,000, and from then on each year: $150,000, $130,000, $166,000, $222,000, $334,000, $268,000, $164,000; in 1932 176,000, $183,000, $308,000, $334,000, $391,000, $526,000, $309,000, $424,000; and in 1940, $505,000.

18 The COURT. I will say to you, Mr. Isseks, so you will know what is in my mind, that, in itself, is pretty meaningless to me unless I know how that figure relates to the general financial picture.

Mr. ISSEKS. We will come to that your Honor. I did not intend to go into these figures at this time. I asked only about 1922 and 1923.

The COURT. Very well.

Q. Mr. Singer, the figure for 1923, gross figures were $18,000, as I recall it, and the figure for 1922, $32,000 as I recall it. During that time was your company, Optical Service Corporation, selling only to wholesalers?—A. Yes.

Q. Was M. Singer & Company an outlet for the Soft-Lite lenses at that time?—A. I think they were. We considered them as a wholesaler. They had five stores—or six stores.

Q. The Riggs Corporation you said was one of the leading quality houses in the country. Was that an outlet at that time in 1923?—A. No.

Q. Was the White-Hubbell an outlet at that time?—A. I think the White-Haines.

The COURT. You mean White-Haines.

Q. I am sorry, I misspoke myself.—A. White-Haines. I think they were a customer of ours in 1924.

Q. So they were not in 1923?—A. In 1923 I think they were.

Q. But Riggs was not?—A. I am not sure. Riggs may

19 have been.

Mr. LEHRICH. Mr. Isseks, do you want to give him a memorandum to refresh his recollection, so we can get it accurately?

Mr. ISSEKS. We will be glad to help out.

Q. Your counsel has asked me to hand you a memorandum [handing to witness]. Does that memorandum help you to refresh your recollection as to whether or not Riggs was purchasing Soft-Lite lenses in 1922 and 1923?—A. I see here that the Riggs Optical Company in 1922 bought 17 percent of our total business.

The COURT. That is in 1922?

The WITNESS. Yes, sir.

Q. And White-Haines bought what?—A. 4.3 percent.

Q. And in 1923.—A. 2.9 per cent for Riggs and 7.2 per cent for White-Haines.

Q. And in 1924?—A. 5.4 per cent Riggs, 20.3 per cent White-Haines.

Q. There is a note there?—A. It became an affiliate in 1925. Riggs Optical, at that time.

Q. Did you have any conversations in 1924 with the gentleman that you said you gave some of your stock to—Mr. Wahlgren—with regard to an effort to push Soft-Lite lenses.

20 Mr. SEYMOUR. I objected to it as incompetent, irrelevant, and immaterial as against the Bausch & Lomb defendants.

Mr. ISSEKS. Subject to connection only, your Honor.

The COURT. Very well, I will reserve as to that.

A. Did I have conversations with Mr. Wahlgren in 1924 regarding pushing the sale of Soft-Lite lenses?

Q. That is right.—A. Yes, sir.

Q. See if I can help you out. I am asking you questions prior to the time you went to see the Bausch & Lomb people in 1924. You remember that, don't you?—A. Yes.

Q. Before that time did you have any talks with Mr. Wahlgren? The question is, did you have a talk, only.—A. Yes.

Q. Did you have any with Mr. Hubell?—A. Yes.

Q. Both of them together and you?—A. No.

Q. Separately?—A. Yes.

Q. Did you go with one of those gentlemen or both of them to Rochester, to see somebody in Rochester?—A. No. I did not go with them.

Q. Did they go with you? I will put it that way.—A. No.

Q. Did they meet you there?—A. Well, it all depends. I have been in Rochester at the same time when they have been

21 there, in various years, but they did not accompany me on any trip to Rochester on any particular mission at that time.

Q. Was Mr. Wahlgren at any time with you in Rochester prior to the time you made your arrangements with Bausch & Lomb for the manufacture by them, for you, of Soft-Lite lenses?—A. If he was, it was accidental. I was not there to meet him at any time there up to that time.

Q. Did you meet him in any conference?—A. Where?

Q. At Rochester?—A. I don't think so. I don't think so; they were not using enough of our products at the time.

Q. Did you have any talk with him about coming to Rochester in 1924?—A. I may have.

Q. What is your best recollection?—A. I say I may have.

Q. Do you recall the conversation?—A. No.

Q. Did you attend any conference in Rochester with Mr. Hubbell and Mr. Wahlgren and representatives of Bausch & Lomb Optical Company?—A. When?

Q. Prior to the time you made your arrangement with Bausch & Lomb?—A. Not that I recollect.

Q. Was Mr. Hubbell present at any conference prior?—A. He might have been.

22 Q. Do you recall it?—A. At a conference?

Q. Yes, sir.—A. No.

Mr. LEHRICH. May we have a suggestion as to who was present at the conference?

The COURT. He is trying to find out if there was a conference.

Mr. ISSEKS. That is what I am trying to find out first.

The WITNESS. I know of none. I know of none; but I met Mr. Hubbell in Rochester more frequently than I had met Mr. Wahlgren.

Q. Mr. Hubbell is still with White-Haines?—A. Yes.

Q. Mr. Wahlgren left Riggs in 1930, did he not?—A. He left Riggs.

Q. Mr. Wahlgren is in the room?—A. Yes; I see him.

Q. You saw him the other day, didn't you?—A. Yes.

Q. And you had a conversation about the conferences you had in Rochester?—A. We did not.

Q. Did not talk about it at all?—A. No; because we had no conferences in Rochester at that time.

Q. You saw Mr. Wahlgren the other day, did you not?—A. Yes, sir?

Q. You did not talk about going to Rochester?—A. Who going to Rochester?

Q. You and he, in 1924?—A. No; because we did not go.

23 Q. You finally got to Rochester yourself, though, didn't you?—A. Very frequently.

Q. Before you made your arrangements in 1924?—A. Yes.

Q. Who was there when you talked to him?—A. To whom?

Q. To Bausch & Lomb.—A. I would be with different groups.

Q. You tell us who they were?—A. Who? I talked with everybody in Rochester who had anything to do with the making and sale of our products.

The COURT. Wait, I do not follow you. Is the terms "Rochester" synonymous with Bausch & Lomb?

Mr. ISSEKS. Generally in the trade; yes. I want to ask the witness.

The COURT. I want to know. When you ask did he speak with Rochester people do you mean did he speak with representatives of Bausch & Lomb.

Mr. ISSEKS. Yes, your Honor.

Q. Did a time come when you went to Rochester, New York, and interviewed representatives of Bausch & Lomb with a view to their

manufacturing solely for you rose-tinted lenses?—A. Soft-Lite lenses. Yes, sir.

Q. When was that?—A. In 1924.

Q. Did you go alone?—A. I went alone.

Q. Whom did you see?—A. Mr. Joseph Hammele, sales
24 manager of Bausch & Lomb Optical Company.

Q. Anybody else?—A. Tom Byrne, the New York representative, was in town at the time, and I think he sat in part of the talk.

Q. Anybody else?—A. I think Mr. Buedingen, who was assistant to Mr. Hammele and would make memoranda covering the conference, was present.

Q. Anybody else?—A. That is all.

Q. That is the first conference?—A. That was the only business conference, I was going to say, that year with Mr. Hammele on that subject. From then on we talked about getting deliveries and things of that kind.

Q. Tell us what happened.—A. At the conference?

Q. Yes, sir.—A. Which month?

Q. That is my fault, I am sure. The first conference.—A. There were not several conferences. I talked with Mr. Hammele several times. I talked with him in May, I talked with him again in June.

Q. In the first conference tell us what happened?—A. There was only one conference. Do you mean by "conference," Mr. Isseks, if I talked to Mr. Hammele for several hours? Are you referring to that as a conference?

Q. You made an arrangement with those gentlemen in 1924?—A. At the time of the arrangement?

Q. Yes, sir.—A. I think that was in June 1924.

25 Q. You say you saw him before that?—A. I talked to Mr. Hammele before that. He originally undertook to manufacture Kryptoks Soft-Lite out of our glass.

Q. When was that?—A. That was early in 1924.

Q. Was anybody else there besides you?—A. That was done through Mr. Byrne by mail, and subsequently when I went up there I talked to Mr. Hammele about the delivery of the product. I would say it was about in May.

Q. Tell us what happened. Just talked about delivery and nothing else?—A. That is all.

Q. And then you saw him again in June?—A. Yes.

Q. Who was there besides you and Mr. Hammele?—A. Mr. Buedingen and Tom Byrne.

Q. Nobody else?—A. That is all.

Q. You did not see anybody else connected with the company, Bausch & Lomb?—A. No; I did not know anyone at that time.

Q. Tell us what happened.—A. I told Mr. Hammele that judging from the grindings, the manufacturing they had done for us up to that time on our French glass, it would enable us in rounding out our line, and having a complete line of Kryptoks—enable us to increase our business sufficiently so that we would be very much interested in placing an order with them for single-vision lenses as well as the bi-focals.

26 Q. Did anything else happen?—A. We discussed the grinding, the charges, and whether or not they would be willing to undertake to do it.

Q. Did you make a memorandum of what took place?—A. No.

Mr. ISSEKS. Your Honor, at this time I offer as Government's Exhibit No. 1 a memorandum which is signed Bausch & Lomb Optical Company, A. D. B., which I think is the gentleman that the witness mentioned, whose name began with "B."

Q. What is his name?—A. Mr. Buedingen.

Mr. ISSEKS. This has been furnished to us by counsel for Bausch & Lomb, and is stipulated as to authenticity, and I understand there is no objection as to the truth of the matter contained therein. I have given the stenographer a copy, and I hand to your Honor a copy which your Honor may keep or return.

The COURT. Any objection?

Mr. SEYMOUR. I have not seen what Mr. Isseks has handed up.

The COURT. Show it to counsel.

Mr. ISSEKS. They have given it to us. It was referred to in the memorandum by the Soft-Lite Company, in their brief, I believe.

27 Mr. SEYMOUR. There is no objection as to authenticity of this or other documents bearing on the same question, but I do object as irrelevant and immaterial to the issues in this case. Perhaps your Honor may very well want to take this subject to motion to strike and connection. But you will remember the peculiar form of this complaint. This is the first document bearing on the so-called exclusive manufacturing arrangement. That is not a subject of the charge of conspiracy in the complaint. It is alleged as a step in a conspiracy. It seems to me the proper procedure would ordinarily be for the Government to proceed with evidence of conspiracy before this would be regarded as relevant. If they did not prove a conspiracy then this would not apply at all, because it is only alleged as a step in the conspiracy, and the Government does not claim it is invalid standing alone.

The COURT. I do not want extensive argument at this point. It seems to me as I read the complaint the Government founded much of its case on an underlying joint arrangement for exclusive manufacture, between Bausch & Lomb and the other defendants. True, it may not be the crux of the offense, but it is one of the elements

on which they found their complaint. I do not see how I can exclude this.

Mr. SEYMOUR. If it is as pleaded, a mere step in the con-
28 spiracy, the proper procedure is to first prove the conspiracy. I understand the difficulty of making such a ruling at this stage, and I understand if your Honor takes this document it will be subject to a motion to strike.

The COURT. I will receive it. It being understood that no objection is made to its competence.

Mr. SEYMOUR. As to authenticity.

The COURT. Or authenticity. Or the fact it is a copy, or anything like that.

Mr. SEYMOUR. No.

Mr. ISSEKS. I also understand from my conversations with counsel for Bausch & Lomb that there is no dispute about the truth of the matter contained therein.

Mr. SEYMOUR. That is substantially correct.

(Marked "Government's Exhibit 1.")

Q. Mr. Singer, I show you Government's Exhibit 1 [handing to witness], and I ask you whether that sets forth in substance what took place between you and Mr. Buedingen and Mr. Hammele and other representatives of Bausch & Lomb, some time in June 1924?—A. Yes, sir.

Q. You have read that from time to time, have you not?—A. I am familiar with it.

Q. Did you have any subsequent conversations with representatives of Bausch & Lomb after the June conference which is set forth in Government's Exhibit 1?—A. About what, sir?
29 Q. In connection with an arrangement for the manufacture by them for you of Soft-Lite lenses.—A. That was settled at that time. It did not come up again.

Q. You had some correspondence, didn't you?—A. As regards that arrangement, no—except to get deliveries.

Q. I show you a document which I have had marked "Government's Exhibit No. 2" for identification.

Mr. ISSEKS. It is a letter, your Honor, dated July 20, 1924, addressed to the witness by Bausch & Lomb Optical Company, J. Hammele.

(Marked "Government's Exhibit 2" for identification.)

Q. I show you the document and ask you whether you received that document in the regular course of business [handing to witness]?—A. I have not seen that in many years, but that was received by me.

Q. There is attached to it a memorandum which bears no date but states on the top "Memo of Conversation with Mr. Nat Singer in regard to Soft-Lite lenses, price, also the manner in which they

will be received by us." Was that memorandum received by you in the regular course of business?—A. May I look at it?

Q. Certainly.—A. May I see the earlier document that you were through before, so I may read it?

Q. Certainly [handing paper to witness].—A. Now I
30 remember it.

Q. My question is whether you received a memorandum attached to Government's Exhibit 2 for identification?—A. I did.

Mr. Isseks. Your Honor, I offer in evidence the letter itself as Government's Exhibit 2, and the memorandum which is attached as Government's Exhibit 2-A. It was furnished to us by the Bausch & Lomb Optical Company. I understand Mr. Hammele is dead, and I understand that there is no dispute of authenticity or truth of the matter asserted.

The Court. No objection?

Mr. Lehrich. No objection.

(Marked "Government's Exhibit 2 and 2-A.")

Q. Mr. Singer, I direct your attention to the last paragraph of the memorandum which is Government's Exhibit 2-A, where it is stated by the writer: "It is understood that we make the above Soft-Lite glass for them only. It is also understood that this arrangement is made between us and the Optical Service Corporation, New York City." Was that part of your arrangement?—A. Yes, sir.

The Court. The last word is "only."

The Witness. "Only", yes.

Mr. Isseks. That is right, your Honor.

31 Q. Now there is this reference in this Government's Exhibit 2, in the letter to you: "I duly received your letter of the 24th instant." Do you know whether your copy of that letter is still around? My associates tell me they have never seen it.—A. I would not know that.

Mr. Isseks. Your Honor, I call for the production by either one of the corporate defendants, of the letter referred to in Government's Exhibit No. 2, if they can locate it.

Mr. Lehrich. The Lens Company does not have a copy, and I understand Bausch & Lomb does not have the Original. We have both made a search. We do not have our copy of the letter referred to.

Mr. Isseks. All right.

Q. There is a reference in the letter, Government's Exhibit 2, to a suggested conference—rather, put it this way: it says in the third full paragraph: "It might be desirable if you could arrange to come to Rochester and spend the day with us." Did you go to Rochester sometime after this letter?—A. Very likely.

Q. Do you recall going?—A. That was 17 years ago, understand.

32 Q. I understand that.—A. I went very often. It was the beginning of our business relationship and there were a lot of problems to be solved concerning delivery and things of that kind.

Q. Whom did you see?—A. Sometimes Mr. Buedingen.

Q. Nobody else?—A. I might have said "Hello" to other people there, but my business was confined to the sales manager and his assistant.

Q. Did a time come when you saw somebody else?—A. Well, as I would go through the plant I shook hands with almost everybody that I knew.

Q. Did you have any business conversation with anybody, 1924 say to 1926?—A. Well, on what subject?

Q. Soft-Lite lenses.—A. Honestly, I do not recall. There were 20 people up there.

Q. Did you see Mr. Edward Bausch, then head of the company?—A. At the plant?

Q. Yes, sir.—A. Just to say hello.

Q. Did you see Mr. Eisenhart, who is now head of the company?—A. Yes, sir.

Q. Between 1924 and 1926?—A. Undoubtedly.

Q. So there won't be any confusion I will go back. Have you seen Mr. Eisenhart in connection with the conversations you had with Mr. Heminele originally?—A. I did not.

Q. See if you can recall when you first talked to Mr. Eisenhart about business matters, not just shaking hands.—

33 A. Well, I don't know what position Mr. Eisenhart had at that time. He was up on the second floor.

Q. He was vice president.—A. Not at that time.

Q. In 1924?—A. No, sir. Not as I recall it. He was up on the second floor. I did not know his relation to the family or the company. I knew he was a very fine gentleman, and I would go by and say hello, and he would ask how things were out on the road, and I told him—always told him how fine things were going, and talked about optical conditions, but not about our business, because he did not seem to have any part in it. Perhaps it will help if I say in our business dealings with Bausch & Lomb it is always done with the sales manager, and everything is cleared through him. Everything else as a rule I put under the term of general visiting.

34 Q. You did say before that between 1924 and 1926 you did talk to Mr. Eisenhart about these matters?—A. Every time I came to the plant, Mr. Eisenhart and I would talk

about conditions generally and about out in the field, but not otherwise.

Q. Did you talk to Mr. William Bausch during that period?—A. Very likely.

Q. About Soft-Lite lenses?—A. In what way?

Q. Manufacturing.—A. I do not think so.

Q. Did you talk to Mr. William Drescher?—A: 1924 and 1926?

Q. Yes, sir.—A. I may have. He was the treasurer.

Q. Did you talk about the distribution of Soft-Lite lenses?—A. No.

Q. Did you talk to Mr. Eisenhart about the distribution of Soft-Lite lenses?—A. No.

Q. Never mentioned it?—A. I don't think so.

Q. Between 1924 and 1926?—A. No.

Q. Did you ever talk to Mr. Eisenhart about the distribution of Soft-Lite lenses?—A. Well, that is a large word, Mr. Isseks.

Q. I used it deliberately.—A. I say how we are doing; tell him how we are doing, the fact that we are selling more and more people all the time; we are making real progress, and I was pleased
35 to have him congratulate us and pat me on the back.

Q. There came a time between 1924 and 1926 where you talked to Mr. Edward Bausch, then president, about Soft-Lite lenses?—A. I think so; I think it was in the Summer of 1926.

Q. Tell us what happened?—A. Well, our business began to grow rapidly. I had gone into it initially, really in the optical business initially, as an aid to Dad, and then thought I would stay in it a while until I got into promotional work of advertising, which is my chief love, and I was following along with it, and then I found I liked it, liked the people in it, I liked the type of people we did business with, they were nice to get along with, and I decided that I was going to stay. The business grew, and I did a little fretting. I thought, Well, here all my business dealings have been with J. Hammele, sales manager. I had since that time gotten acquainted with Mr. Edward Bausch, the president. I had mentioned to one of the younger executives, Gordon Baird, that I sometimes got bothered; if I am going to be in this business permanently, I would like to check on our contractual arrangements, and I had no questions at all that Bausch & Lomb would carry out their arrangement, agreement, with us, to supply us only, and I should like very much to have a word on the subject from the head
36 of the company; it would ease my feelings. Gordon met me up in Long Lake, drove my wife and me over to Lake Placid, where Mr. Edward Bausch was visiting at the time, and told Mr. Edward Bausch about it, and Edward said he thought I was right if it would make me feel easier and happier and when he got back to Rochester he would take care of it with the directors,

the "old folks" as he called it, and the younger ones who had just then come to—and incidentally, Mr. Isseks, it was at that time I think that Mr. Eisenhart and Mr. Taylor began to replace the active management, Mr. Edward Bausch and Mr. Drescher, and I was then invited to Rochester and let into the directors' room, duly impressed, the older folks were there and the younger folks were there——

Q. I hate to interrupt, but I believe the Court does not know who the elder folks are, and I believe I do not know either. Tell us who they are.—A. We feel towards them as you would towards the family; Edward Bausch is the president, Willie Bausch is his younger brother—he is about 83—Carl Lomb will be—at that time was about the same age; Mr. Drescher was Mr. Edward Bausch's brother-in-law and he was in the late sixties.

Q. That is, Mr. William Drescher?—A. Yes; Mr. William Drescher.

Q. Those are the ones you call the older folks?—
37 A. Yes, sir.

Q. Tell us who the younger are.—A. The younger are Herbert Eisenhart, now in his Fifties; Mr. Taylor, the early Fifties; Carl Bausch—the fellows now running the business. They were the younger fellows coming in to take over; and I was just a little bit worried that they would not get the realization as the older folks had had it through Mr. Hammele, who was with the older group; of course he been with the company about fifty years; as to our contractural arrangements, and I thought I would be a little easier if it happened, and that is what happened. They talked it over and the statement was, "Nat, we will always serve you as we have agreed to," and Edward Bausch said, "I will commit this to writing," and a little later I got a letter from him assuring me that they would not make a rose-tint glass or similar hue glass for themselves or any other manufacturer to be used in competition with us, but they always reserved the right, as any factory of their type would, if anything new or any improvements came out.

Q. I am going to go back before that and refer you to a letter, and I want to get that letter on the record, and I forgot it.

Mr. Isseks. I now offer the letter referred to by the wit-
38 ness, dated September 13, 1926, addressed to the witness.

The copy we have is signed "Bausch & Lomb Optical Company," and I understand the original is signed by Edward Bausch as President underneath the words "Bausch & Lomb Optical Company."

Mr. Lehrich. Here is the original, if you want it.

Mr. ISSEKS. Thank you. I might as well offer the original. I will have the photostat marked only, your Honor. The original has the signature.

(Marked "Government's Exhibit 3.")

Q. This is the letter, is it not, Mr. Singer, that you have reference to (handing)?

The COURT. You say the original was signed by Edward Bausch as President?

Mr. ISSEKS. Yes, sir.

Mr. LEHRICH. The title "President" does not appear but it is signed "Edward Bausch."

Mr. ISSEKS. The reply is addressed to the president and that is why I was misled. At this time, your Honor, I offer the reply, showing the witness a copy, which is to be marked as "Government's Exhibit 4."

Mr. SEYMOUR. Will counsel exhibit these copies before they are actually marked, so we can see them.

Mr. ISSEKS. It is dated September 16, 1926, addressed to
39 Edward Bausch, President, and signed Optical Service Corporation, Nathaniel Singer, President.

The COURT. Before you mark it, let counsel see it. Is there any objection?

Mr. SEYMOUR. No objection except the general objection to the line which your honor has overruled.

The COURT. Very well.

(Marked "Government's Exhibit 4.")

Q. I want to go back to this meeting before I take up these letters, Mr. Singer. Were these six gentlemen or seven gentlemen present, whose names you have mentioned before, the older folks and the three younger gentlemen?

The COURT. Present when?

Mr. ISSEKS. At this conference he was testifying about, at the Board of Directors' meeting.

The COURT. In 1926?—A. Yes, sir.

Q. Who was the spokesman there, if you recall?—A. I think Edward Bausch.

Q. Was there anything said about the method of distribution of Soft-Lite lenses?—A. No, sir.

Q. Nothing said up to that time, only your relationship with the Bausch & Lomb people, nothing said about the method of distribution?—A. No, sir.

Q. Never had been mentioned?—A. It might have been mentioned as something we had always done, did before that,
40 did before we did business with them; there was no change in the method.

Q. Nothing was said by them or nothing by you as to how you were going to distribute your lenses?—A. No.

Q. Didn't anybody say "Are you going to continue distributing the way you did?"—A. That was not their affair. It was simply our manufacturing.

Q. My question was whether you were asked a question by them?—A. I do not recall ever of such a question having been asked.

Q. Did you make the statement to them that "I intend to distribute the way I have?—A. I did not. It was not brought up.

Q. I would like to know what the method of distribution was in 1924 when you saw Hammele for the first time; how was your company distributing your lenses?—A. We were selling to the wholesalers.

Q. Only?—A. Wholesalers only.

The COURT. Including M. Singer?

The WITNESS. Yes, sir.

Q. Who were the wholesalers at that time?—A. In 1924?

Q. Yes.—A. We submitted a list to Bausch & Lomb at the time. If I could have that list I could refresh my memory.

Q. Oh, you did submit a list to them?—A. Yes, sir.

41 Q. I am sorry. I thought you did not——

Mr. LEHRICH. The paper you offered in evidence refers to a list he was submitting.

Mr. ISSEKS. Maybe I should have read it. Unfortunately I was listening to the witness.

The COURT. It is customary for counsel to read the exhibits before he offers them.

Mr. ISSEKS. Counsel will have an opportunity to cross-examine.

Q. You testified before the subject matter was not even mentioned.—A. No.

Q. But you said you submitted a list to them?—A. No. That list was submitted at the time they undertook the manufacturing and shipping of our lenses, and it was for a purpose.

Q. Did anybody ask you for the list?—A. No.

The COURT. When was it submitted?

The WITNESS. At the time.

The COURT. Give me the approximate date.

The WITNESS. I would say in 1924, at the time we made our arrangement with Bausch & Lomb; I think July 1924 or June 1924.

Mr. LEHRICH. In the interest of clarification, the exhibit offered is dated June 11, 1924.

The COURT. Which exhibit?

42 Mr. LEHRICH. Exhibit 1. It specifically says they are filling all orders from their stock jobbers and licensees named on their list, copies of which are attached, indicating that at that

time there was a list attached. I have the list if Mr. Isseks wants it.

Mr. ISSEKS. Oh, I certainly do.

Q. Your counsel has handed me a list which is attached to the original of the memorandum of Bausch & Lomb, which is Government's Exhibit 1——

Mr. ISSEKS. I would like to have the list marked as an exhibit, if I may, your Honor, and I would like to have them marked 1-A and 1-B, because they are attached to Exhibit 1, unless counsel object.

Mr. LEIBICH. Suppose we photostat these lists and attach them to the others, and I can have the originals back.

The COURT. Mark them in now and the photostats will show the markings and you can substitute the photostats for the originals.

(Marked "Government's Exhibits 1-A and 1-B.")

Q. Mr. Singer, Government's Exhibit 1-A is a list of your Optical Service Corporation customers. That is what it says on the top.

Mr. ISSEKS. The name is wrong, the witness points out. It should be Optical Service Corporation.

43 Q. When you said customers, you mean wholesalers, did you not?—A. All we did business with. We would list retailers but they were billed through the wholesalers.

Q. And the third page which I have, marked "Government's Exhibit 1-B," also attached to Government's Exhibit 1, is also a list of retail licenses?—A. Yes, sir. Those are stock dealers.

Q. And those stock dealers were customers of the wholesalers?—A. That is right.

Q. Now when you went up to see Mr. Hammele you had those lists with you, did you not?—A. No; I did not.

Q. It was attached to his memorandum of June 11, 1924. Did you give it to him or send it to him by mail?—A. Very likely, because that was the first of these papers.

Q. Yes.—A. June 11th—no, we did not know—I do not know whether I mailed it or brought it up subsequently. We did not know at that time that they would be willing to undertake grinding. This first arrangement was only pertaining to the grinding of our French glass and the second arrangement, which is the one we have been doing business with them for all these years, is based on their making the glass and doing the grinding.

Q. You do not know of any letter that accompanied this list, do you?—A. I do not recall that.

44 The COURT. That was annexed, I though, to Exhibit 1.

Mr. ISSEKS. But, your Honor, this is an interoffice memorandum prepared by Mr. Buedingen. If there is any correspondence in connection with the delivery of this list the Government would like to have it. I have not seen any.

Mr. LEHRICH. If there were any, the Government would have had it by now because they asked for everything and they were furnished everything.

The COURT. In other words, counsel has not got it.

Mr. LEHRICH. That is correct.

Q. Now between the time when you furnished Mr. Hammele with a list, Government's Exhibit 1-A, of customers, and Exhibit 1-B, which says "retail licensees," was there any talk with Mr. Hammele or any other person at Bausch & Lomb; between that time and the meeting at the board of directors in July, or some time—— —A. 1926.

Q. 1926—any talk about your distribution system?—A. No.

Q. If there was, you would remember it?—A. Well, that is a hard thing to say. I think I would. It was a very unimportant matter for them. It was our business and we did not discuss our business with them. We just discussed general business we were mutually interested in.

45 Q. Now coming down to these letters, Government's Exhibits 3 and 4, those are the letters that you said before set forth the arrangement that you have had with Bausch & Lomb since 1924?—A. Well, the arrangement started in 1924.

Q. But they put it in a letter in 1926?—A. That was to ease my feelings to have the same arrangement.

The COURT. It was confirmatory of what was already in effect.

The WITNESS. That is all.

Q. Now the second paragraph of this letter to you, Government's Exhibit 3, says "Since the very beginning of our relations with you in connection with this transaction it has been understood that we would safeguard your interests in every way, and it has never been our intention to make competition for you by either marketing of tinted lenses of our own or producing similar tinted glass for other manufacturers, and it is our intention to abide by this understanding." That was your arrangement since 1924?—A. Yes, sir.

Q. Now I want to go back to 1924. Bausch & Lomb was a manufacturer of various optical lenses, was it not?—A. Yes, sir.

The COURT. I assume your adversary will call the next succeeding paragraph to my attention.

46 Mr. ISSEKS. Certainly, he has the opportunity and maybe I will ask the witness anyway.

Mr. LEHRICH. And the postscript too.

Q. Bausch & Lomb in 1924 was manufacturing various kinds of lenses, was it not?—A. Yes, sir.

Q. Will you tell us the kind of lenses they were manufacturing? Do you want to look at the postscript?—A. I know that any color glass that was wanted at that time by the trade; that is their business. There was Crookes, I imagine he was making or selling

fieusal, Noviol, Euphos, Smoke, Amethyst, reds, yellows—various colors.

Q. Who was responsible for making the request set forth in paragraph 2nd of Government's Exhibit 3? Did you ask for it or did they offer it?—A. I undoubtedly asked for it.

Q. And they agreed after you made the request?—A. Wasn't that the original arrangement in 1924?

Q. I am asking you.—A. Sure. That is why I remember it. I would not hand them our specifications, our trade-marks, our business, so they won't compete with me on a glass like ours and just forget what we had been told before, and the letter from Mr. Edward Bausch is that no one wants to make any competition for us.

Q. You said you did not want them to compete with
47 a glass like yours.—A. We did not want a similar colored glass made by them, or themselves or anybody else to sell against us when they were already making the glass for us.

Q. So that you did not consider Crookes or fieusal or smoke or amber in competition with you?—A. That is not the fact at all.

Q. I am asking you the question. You can answer it as to what the understanding was.

Mr. SEYMOUR. I object to the operation of the witness's mind on that question. Counsel is now trying to cross-examine about the meaning of a letter written by somebody else and the operation of his mind on it.

The COURT. He is asking him whether he regarded certain types of glass as competitive with his brand of glass. I don't care whether it is an expression of the letter or whether a description of the business, but I will let him answer the question in substance.

A. Every colored glass is in competition with Soft-Lite.

Q. Nevertheless you testified, I think, less than a minute ago, that you did not want them to compete with a glass like yours.—A. Similar color as ours.

Q. By similar color what do you mean?—A. Rose tint.

The COURT. I suppose untinted glass is in competition with tinted glass, too, isn't it?

48 The WITNESS. Always. Everything is.

The COURT. I suppose non-glasswear is in competition with glasswear.

The WITNESS. That is an unfortunate circumstance: non-glasswear.

Q. Now your counsel has pointed out and will examine you about paragraph 2, but I am going to direct your attention to the third paragraph. Mr. Bausch says to you: "We hope this may be sufficient guarantee to you that we do not wish to do anything that would look like competition in connection with the

Soft-Lite, and we naturally expect that your efforts in the sale of same will be continued as at present for an indefinite period unless by consent of both parties concerned a different arrangement is agreed upon."—A. Yes, sir.

Q. You exacted that guarantee, did you not?—A. I asked for it and got it.

Mr. LEHRICH. I think we have been over this a half dozen times.

The COURT. Yes; there has been a certain amount of repetition, but I take it this is a hostile witness and I will give him a certain amount of leeway.

Mr. ISSEKS. Your Honor, I submit he is a hostile witness.

Q. There came a time, did there not, when you wanted
49 further assurance besides the 1926 letter?—A. Not that I recall now, Mr. Isseks.

Q. You did get a letter in 1932, didn't you, from Mr. Eisenhart?—A. It must have been in connection with something they were doing for us at the time. I thought we were sufficiently secured.

Mr. ISSEKS. I now offer, in evidence copy of a letter dated July 6, 1932; I will show it to counsel before it is finally marked. It is addressed to the witness and signed by Bausch & Lomb Optical Company, and it is my understanding that the signature on the original is by Mr. M. H. Eisenhart.

("Marked Government's Exhibit 5.")

Q. I show you Government's Exhibit 5 and ask you whether you received that letter in the regular course of business?—A. Yes, sir.

Q. What were the circumstances under which this letter was sent to you by Mr. Eisenhart, who was then, I believe, an executive of the company?—A. I believe he was the president, wasn't he?

Q. I don't remember the date. Counsel will tell you.—A. I think he was president. When Bausch & Lomb obtained a patent on Nokrome glass, they proceeded to manufacture Nokrome
bifocals in white themselves, and in Soft-Lite for us.
50 Just to be sure that it was understood that whereas we were benefiting by the fact that Nokrome was made under a patent, and white and Soft-Lite was made in Nokrome, we wanted to have it definitely understood that that in no way affected our agreement with Bausch & Lomb that anything made in Soft-Lite, so far as the Sift-Lite portion was concerned, belonged to us.

The COURT. Let me see if I am clear. Does this letter mean that you were to be the exclusive distributors of all Nokrome glass?

The WITNESS. Only in Soft-Lite.

The COURT. Only to the extent it was Soft-Lite.

The WITNESS. That is all.

The COURT. Nokrome lenses could be made out of Soft-Lite and other forms?

The WITNESS. They make it out of white primarily, and in Soft-Lite, and we did not want the fact that they made Nokrome under a patent, even though they could make it in Soft-Lite, that it in no way affected our agrement that the Soft-Lite belonged to us, and he said: "I will write you a letter and assure you it won't affect our arrangements in any way." That is all it was.

Q. The agreement you said was made in 1924 and as set forth in Government's Exhibit 3, and further expanded by Government's Exhibit 5, and that has continued, has it not?—A. Yes, sir.

51 Q. Let me finish, please. Up to the present time?—A. Excuse me. I thought you were finished. Yes, sir.

Q. Now when you made this in 1924 with Mr. Hammele and later on with the board of directors, you testified about these gentlemen, the old men and the young men, set forth in the letter, Government's Exhibit 3, was there anything said in any of these conferences about any of the lenses that would not be what is called first quality?—A. No. They did not concern themselves with our distribution and our distribution plans. They made and sold to us and we sold as we felt was to our best interests.

Q. Did a time come after that, subsequent to 1926, when there was a new arrangement with regard to so-called second quality Soft-Lite lenses?—A. Yes, sir.

Q. When was that about?—A. That was at the time we got a new set of prices from Bausch & Lomb, and I would say in the late Twenties. I cannot remember. Maybe later.

The COURT. Have you anything to refresh his recollection?

Mr. ISSEKS. I am going to show him a document in a minute. I have no document for a date, your Honor. I do not care about the date.

52 Q. Up to 1935 you did have a specific arrangement with regard to second quality lenses, did you not?—A. I don't know what you mean by specific arrangement; manner of of dealing.

Q. I show you a memorandum dated May 3, 1935, written to Mr. Carl Bausch, one of the gentlemen you mentioned here, and Mr. Husson, of the export department of Bausch & Lomb, and ask you if that refreshes your recollection as to the nature of the arrangement?

Mr. SEYMOUR. If your Honor pleases——

The COURT. The question asked is whether a document refreshes his recollection, and the answer is yes or no.

The WITNESS. Yes.

The COURT. I do not see how you can make objection to that kind of a question.

Mr. SEYMOUR. I cannot. I misunderstood.

Q. What was the arrangement?

Mr. SEYMOUR. I object to this as incompetent, irrelevant and immaterial. I have not seen the document which counsel showed the witness.

Mr. ISSEKS. I am terribly sorry [handing copy to counsel].

Mr. SEYMOUR. This document and this subject matter concerns the export of Soft-Lite lenses, a different product than is sold in the United States, a product which, in so far as it is ex-
53 ported, is certainly one which does not affect the kind of commerce that this complaint is addressed to, to wit, interstate commerce, and therefore I submit it is outside of the complaint.

The COURT. This complaint does not extend to foreign commerce?

Mr. ISSEKS. It is not alleged, but—may I be heard?

The COURT. Certainly.

Mr. ISSEKS. This document, and a line of documents, will show that unlike the so-called first quality Soft-Lite lenses, which became the property of the Soft-Lite Company immediately upon manufacture, the second quality became the property of Bausch & Lomb pursuant to an agreement with the Soft-Lite Company, and that the prices at which such Soft-Lite lenses could be sold were fixed pursuant to agreement between Soft-Lite Company and Bausch & Lomb, and that they could only be exported and could not be sold in the United States.

The COURT. In other words, you want to draw a boundary line which would exclude this material from the scope of the balance of the agreement?

Mr. ISSEKS. That is right.

The COURT. You want to differentiate.

Mr. ISSEKS. Yes, your Honor.

54 The COURT. Then within those limits I will permit you to pursue it.

Mr. SEYMOUR. Exception.

Mr. ISSEKS. We are not trying to enjoin that arrangement because it is all over anyway.

Mr. SEYMOUR. It is not admissible as evidence of a different agreement or arrangement or anything on the conspiracy.

The COURT. As I understand, he wants to show the nature of the agreement with respect to domestic lenses by showing how it differs as applied with respect to foreign lenses.

Mr. SEYMOUR. It seems to me that is a pretty indirect way of proceeding, if your Honor please. The direct way would be to

show what the domestic arrangement was rather than show some other arrangement.

The COURT. A complicated business arrangement sometimes necessitates that way of revealing the fact.

Mr. SEYMOUR. There is not any possible dispute or difficulty about the domestic arrangement as far as purchase and sale of Soft-Lite and Bausch & Lomb are concerned but why we have to go around through the foreign business, which is not in the complaint, eludes me, but I will accept your Honor's ruling, of course.

Q. What were the arrangements with regard to the second quality Soft-Lite lenses in 1935?—A. Well, for some years
55 past Bausch & Lomb billed us for first quality lenses only, as we were not selling seconds in this country, and they retained the Celex quality lenses which are substandard, and were to dispose of them in foreign countries where we were not ourselves operating through our foreign offices, and were to give us a percentage of the recovery price because it was substandard goods sold under our name, however, a percentage of the recovery price on everything that they sold.

Q. As to the first quality Soft-Lite lenses, title to the lenses became yours immediately upon manufacture, did they not?—A. Always.

Q. As to the second quality lenses, title stayed in Bausch & Lomb, did it not?

Mr. LEHRICH. From what period, Mr. Isseks?

Mr. ISSEKS. I shall ask the witness.

The COURT. So far I have it from 1935 on. That is all I have.

The WITNESS. From 1935 on it was their property.

Q. Was there any arrangement as to whether or not they could sell the second quality lenses in the United States?

The COURT. He has already answered that question. He said it could not be sold in the United States.

56 Mr. ISSEKS. I am sorry. I did not realize he had gone that far.

The COURT. I want to shorten this and avoid repetition. I heard the witness testify it could be sold only abroad and only in those places where they did not have foreign offices.

(Short recess.)

Q. I am going to go back to another subject matter for a few questions, if I may. I show you the original of Government's Exhibit 1, to which is attached Government's Exhibits 1-A and 1-B, and I ask you if you can now recall the reason why you gave this list of customers and list of retail licensees to Mr. Hammele or any other representative of the Bausch & Lomb Company?—A. Why, certainly; I always knew. You did not ask that before.

Q. I know. I forgot that, and that is my fault. My associates are here for that.—A. The reason, Mr. Isseks, we gave that to Bausch & Lomb was because they were doing special grinding on Soft-Lite lenses, such as on prescriptions, such as on Punktals, and in order to save time, if an order came in from a customer of ours they would immediately proceed to fill it, ship direct, and bill us for it. If it came from an optician, retail or wholesale, and he was not on our list of customers, they would advise that they did not make or sell Soft-Lite lenses for their trade and
57 would refer the order to us. They would save several days' time as a rule. That was the purpose of the list.

Q. And who was the one who suggested they get the list?—A. We submitted it so that they would not do prescription work for those that we were not doing business with because of the difficulty of collecting from somebody not on our list; somebody that was not a customer.

Q. Only because of difficulty of collecting?—A. Certainly. If we were not doing business with a man we could not bill him for something.

Q. Were you willing to do business with anybody that was not on your list?—A. Why, certainly.

Q. And have you always been willing to do business with people not on your list?—A. If they are the right type for us.

Q. Would you sell to anybody who is not a licensee?—A. I don't know what you mean.

Q. You have licensees.—A. You are referring to wholesalers?

Q. I am talking about retail licensees right on that list.

The COURT. What is the date?

Mr. ISSEKS. The date of the memorandum is 1924.

A. That term "retail licensee" is a halo used for a mere
58 commercial term, stock dealers. A retailer who places an order for a stock of lenses for which he received a discount on his original purchase and on subsequent purchases he received a quantity of promotional material, and from then on he has the privilege of buying his Soft-Lite lenses from any of our Soft-Lite wholesale suppliers at the same list price and discount as on the initial order.

Q. You said something about a halo.—A. We built a halo around our product.

Q. Now coming to the second quality lens matter, I want to direct your attention again to Government's Exhibit 1, which is the original arrangement. In the fifth paragraph it states: "The first and second selection lenses are charged at our regular Centex and Celex list price less 33⅓% and 10%, that extra ten percent covering the cost of the glass for which no invoice will be rendered-

by them." At that time in 1924 you got the second quality as well as the first quality?—A. We did.

Q. And in a memorandum, Government's Exhibit 2-A, the rider, Mr. Hammele apparently says: "The accumulation of second quality lenses to be sent them at the end of each three months' period." So that in 1924 you were getting the second quality lenses as well as the first.—A. They were being billed to us.

59 Q. How long did that continue?—A. Until such time as we found out that it was more profitable to have the Bausch & Lomb Export Department dispose of the seconds than it was for us to do it direct.

Q. My question is the time.—A. Well, in between 1924 and whatever time that export arrangement was made.

Q. I am very sorry, but I do not know the time.—A. Mr. Isseks, the export department of ours has been such an infinitesimal part of our business that it has never made an awful lot of difference It was a case of disposing of material we could not possibly use.

Q. May I have a time?—A. Between 1924 and 1935.

Q. Thank you. When you made that subsequent arrangement with regard to the second quality lenses, that was a modification of the original?—A. That was due to the subsequent type of dealing with it.

Q. Was it an amendment or modification?—A. A new type of dealing.

Q. A change in the original agreement?—A. It was a new type of dealing.

Q. The memorandum, the original memorandum, set forth what I read to you a minute ago, namely, that you were to get the first and second quality.—A. That memorandum you remember, Mr. Isseks, was based on the grinding of our French glass, and

60 we wanted to get everything they made from that glass.

Q. When you made the agreement by which they would make the lenses for you, was there any arrangement made for the second quality lenses?—A. They were to bill us and store the lenses for our account. We did not pay for those lenses.

Q. And title was in you?—A. We owned them.

Q. But there came a time when that was changed, was it not?—A. A new arrangement was made.

The COURT. You said you were billed but you did not pay for them. You mean you did not pay for them then or never paid for them?

The WITNESS. What they did, your Honor, was to accumulate the lenses and say we would have to pay for them and take them some time and some years later they shipped to us, and we paid so much a month and we took them on.

The COURT. Finally liquidated it?

The WITNESS. We could not use it in this country, so——

Mr. ISSEKS. At this time I would like to offer the arrangement with regard to the second quality lenses made some time between 1924 and 1935 as a modification of the original agreement, merely to show what the domestic agreement is.

61 The COURT. As a matter of fact, since the last objection was made, and I have heard the testimony, it seems to me an arrangement which says a certain quantity of material shall be excluded from the domestic stream of commerce is an agreement relating to domestic interstate commerce and therefore admissible on its own right.

Mr. SEYMOUR. Not under this complaint, if your Honor please. This complaint charges just one conspiracy, a conspiracy to control the prices to be charged by wholesalers, the prices to be charged by retailers and to implement that by the process of selection of wholesalers and retailers; not a word about restraint other than those involved in such a conspiracy.

The COURT. I follow you completely there, Mr. Seymour, but it seems to me that if, as part of that agreement, a certain quantity of material, however described, is to be kept out of the market altogether, that, at least, is an element of that agreement relating to the domestic commerce, regardless of the fact it is an agreement for foreign commerce. In other words, it might be an agreement to destroy a certain quantity; it might be an agreement to give away, gratis, to charitable institutions; it might be an agreement to do most anything, but it has a bearing on the scope of the domestic agreement.

62 Mr. SEYMOUR. There are two problems involved; one is, is such a restraint charged and are we concerned with it, and I say this complaint does not charge any such restraint and therefore it is inadmissible. And the second question is, if it was charged, would it be restraint——

The COURT. You did not follow my comment. I did not want to admit it as evidence of a restraint, nor do I want to admit it as evidence of anything except evidence of the character of the agreement relating to the domestic commerce, the interstate commerce.

Mr. SEYMOUR. I submit it is not evidence with respect to the conspiracy charged in this complaint.

The COURT. Yes; but there has been tendered evidence to the effect that only first-class lenses were to be delt with in interstate commerce, and the way to prove that is by showing that second-class lenses were to be dealt with in some other manner. That is the only purpose for which it is admitted.

Mr. SEYMOUR. My objection is noted and I except to your Honor's rulings.

Mr. Isseks. At this time, your Honor, I would like to offer in evidence the memorandum I showed the witness for the purpose of refreshing his recollection. It is dated May 3, 1935, written to Mr. Carl Bausch, by the Export Department, G. Husson. I
63 understand there is no question about its authenticity or the truth of the matter contained therein.

The Court. I will receive it for the purpose I have just indicated.

(Government's Exhibit 6 for identification received in evidence.)

Q. Now, Mr. Singer, this matter of exporting foreign lenses, second quality so-called, was one that came up from time to time, did it not?—A. Yes.

Q. In 1936 you had certain conversations, did you not, with Mr. Husson, and also with Mr. Eisenhart, with regard to the same problem?—A. I do not know about Mr. Eisenhart. I do not think that he concerned himself with export. He might sit in at a meeting. It was all handled by Mr. Husson and Mr. Hallauer.

Q. See if I can refresh your recollection. I show you a photostat of an original memorandum dated June 22, 1936, to Mr. Hallauer, signed "G. Husson," and see if that does not refresh your recollection of the conversations you had with Mr. Eisenhart?—A. Yes; I say that had nothing to do with the Celex lenses.

64 The Court. Mr. Witness, you misunderstood the question. The question is whether this document refreshes your recollection, and the answer is either yes or no.

The Witness. Yes.

Q. It does?—A. Yes.

Q. Did you have a conversation with Mr. Eisenhart some time in 1936 with regard to a new method of distribution of second quality Soft-Lite lenses?—A. No.

Mr. Seymour. I assume, if your Honor pleases, that my objection to this line of inquiry may be regarded as continuing.

The Court. Very well.

Mr. Seymour. So that I won't have to object each time.

The Court. Very well.

Mr. Seymour. And that I may make a motion to strike, as to this line as well as the others.

Q. Did you have a conversation with Mr. Eisenhart in 1936, with regard to a method of distribution of other Soft-Lite lenses outside the United States?—A. Made of French glass. Not made by Bausch & Lomb.

Q. That is right. And you had those conversations with Mr. Eisenhart?—A. Yes, sir.

Q. Where did you have the conversation?—A. I presume at his office.

65 Q. Where?—A. In Rochester.

Q. Tell us what happened?—A. Well, it was a case of utilizing our foreign glass.

Mr. LEHRICH. If your Honor please, I object on the ground that the witness testified that this had reference to glass made by somebody other than Bausch & Lomb. Any conversation with respect to the distribution of such glass is certainly not relevant in this case. The charge in this case is with respect to glass made by Bausch & Lomb exclusively for us. The answer is that that memorandum had reference to glass made by somebody else other than Bausch & Lomb and distribution in Europe of that glass. That is certainly not within the issues in this case.

The COURT. So far as I understand the question is whether this witness had conversations with Mr. Eisenhart with respect to a modification, or with respect to distribution of Soft-Lite Lenses abroad.

Mr. ISSEKS. The witness said no.

The COURT. Anything further?

Mr. ISSEKS. The witness said no to that, your Honor.

The COURT. The witness said no.

Mr. ISSEKS. I asked him if it related to the distribution of Soft-Lite lenses abroad and he said yes.

66 Mr. LEHRICH. But he added, Mr. Isseks, that those were lenses not made by the Bausch & Lomb glass.

Mr. ISSEKS. That is right.

Mr. LEHRICH. The issue in this case is with respect to glass made by Bausch & Lomb.

The COURT. I would not go that far. There is also alleged in this case a conspiracy between Soft-Lite and others, and the introduction of a system founded more or less on the Ethyl type of situation, which in and of itself would constitute a restraint of trade. I am not passing on the law question at this time, but I think this is admissible as a matter of evidence.

Mr. LEHRICH. May I say another word on that, your Honor. The charge in the complaint is that we conspired to distribute. It is a distribution charge, of the lenses made by Bausch & Lomb for Soft-Lite exclusively, by doing certain things. Any arrangements that we made with anybody else concerning their products are certainly not the subject of this inquiry. I therefore object to this question on that ground.

The COURT. I will allow it.

Q. Tell us the conversation you had with Mr. Eisenhart at his office in Rochester, with regard to the Soft-Lite lenses you

started to testify about.—A. The conversation was that we had a quantity of glass abroad, that we wanted to have it
67 manufactured into lenses of the type that could be used on the Continent; that we had a French manufacturer who would be willing to take the glass and grind it into lenses for us; that we proposed to differentiate between our own products and the foreign glass and grinding, neither of which was up to the domestic standard, by putting under it "F. F." probably—French formula; and that I felt our doing so would enable us to cash in on glass that we were accumulating over there, and enable us to increase our distribution abroad without any harm to Bausch & Lomb reputation. That was all concerning their export business. They had an agent in France, Routit, and we felt if we did that we would be interfering with Bausch & Lomb's business in France, of Routit. Mr. Eisenhart said no; do as you please.

Q. Wasn't there something said at that conference or shortly prior thereto as to the attitude of Bausch & Lomb with regard to second quality Soft-Lite lenses manufactured by them and owned by them pursuant to the earlier modification, if you did what you said you were going to do about this French outfit?—A. I would not talk to Mr. Eisenhart about distribution, Mr. Isseks. He was not concerned with that. I would with Mr. Husson.

Q. Look at the first sentence at the bottom of the page, or perhaps read the last paragraph on the bottom of the page, and see if that refreshes your recollection [handing to
68 witness].—A. The same as before.

Q. I beg pardon?—A. The same as before.

Q. I do not follow you. Do you mean you don't recall?—A. Yes, I recall. The same as before.

Q. You do?—A. Yes.

Q. What was the attitude of Mr. Eisenhart about their exporting second quality Soft-Lite lenses if you made an arrangement with somebody else?—A. Mr. Isseks, I state again that all my dealings with Bausch & Lomb if they were domestic was with the sales manager; if for export with the export sales manager. All our talks with Mr. Husson and——

The Court. It is simpler to answer that you do not know Mr. Eisenhart's attitude, if that is the answer.

The Witness. Yes, sir.

The Court. Then let us save time and discussion.

Q. Did you have a discussion with Mr. Husson about it?—A. Yes.

Q. What did he say?—A. He said he did not like us competing with him in the export market, because they had that territory over there, and we proceeded to do it anyway.

Mr. ISSEKS. I will offer a memorandum dated June 22, 1936, from Mr. Husson to Mr. Hallauer. I understand that there is no dispute about the authenticity or dispute about the truth of the matters contained therein.

Mr. LEHRICH. Don't mind me. That is a memorandum
69 between two employees of Bausch & Lomb as to what transpired between them. It certainly is not binding on us, and I do not stipulate the truth or authenticity until I know what it is.

The COURT. Your objection is founded upon the fact that this is a copy, and that it has not been traced to any of your clients

Mr. LEHRICH. Yes. It is not binding on us.

The COURT. I will have to sustain his objection on that ground.

Mr. ISSEKS. Your Honor, I would like to be heard on that, in addition to the problem of calling a witness to prove it. First of all we charge a conspiracy that started in 1924, on the part of various of the corporate defendants and certain individual defendants, and I think it is well accepted that a statement made by one in the course of a conspiracy is binding on the others.

The COURT. Yes; but you have to make out a prima facie case of conspiracy before you can do that. And even if you have established a prima facie case of conspiracy a man is entitled to insist that you produce the original documents and not copies.

Mr. LEHRICH. I am not putting it on the ground that it is a copy, but I am putting it on the basis that it is a communication
70 between two employees of Bausch & Lomb as to what they understood transpired between them, and that is not binding on us. That is a matter between employees of Bausch & Lomb. It is not binding on us.

The COURT. I thought you were objecting to the paper that was offered as a copy and not the original.

Mr. LEHRICH. No, I am not putting it on that ground.

The COURT. Assuming he makes out a prima facie case of conspiracy, this would be admissible.

Mr. LEHRICH. I am making the objection subject to that burden being assumed by him. He has to prove the conspiracy.

The COURT. I can allow it to go in subject to connection, or wait until he makes out a prima facie case. It is a matter of expediency.

Mr. ISSEKS. I offer it subject to connection.

The COURT. I will receive it.

Mr. SEYMOUR. May we have an understanding, if your Honor pleases, that objections made by one counsel are deemed made by the others, so that we do not have to bother your Honor with double objections when we both object?

The COURT. Very well, I will allow that.

(Marked "Government's Exhibit 7.")

Q. Mr. Singer, in connection with the arrangement regarding the so-called Celex second-quality Soft-Lite lenses,
71 your company participated in the fixing of the prices for those lenses as sold abroad, did you not?—A. I don't think so.

Q. I show you a memorandum dated September 8, 1938, signed by Mr. Husson, purporting to be a memorandum of a meeting at which Mr. Eisenhart, Mr. Hallauer, Mr. Baird, Mr. Ramaker, Mr. Reh, Mr. Welch, and Mr. Husson were present, "Subject: Stock of Celex Soft-Lite Lenses," and I ask you whether that refreshes your recollection (handing to witness)?—A. I was not there.

Q. I beg your pardon?—A. I was not there.

Q. I did not say you were there. I ask your whether it refreshes your recollection as to what the arrangement was, the arrangement that is set forth right in the memorandum.—A. Well, I knew what the arrangement was.

The COURT. Mr. Witness, the answer to the question whether it refreshes your recollection is always either yes or no.

The WITNESS. I will have to read it.

Q. The question is whether it refreshes your recollection as to whether or not your company participated in fixing the prices of the second quality Soft-Lite lenses exported by Bausch & Lomb.—A. It does.

Q. And did your company participate in fixing those prices?

72 Mr. SEYMOUR. If your Honor pleases, this question goes somewhat beyond the line on which Mr. Isseks offered earlier evidence as to the foreign markets. This turns on the question of the price at which lenses are to be sold abroad. It is far beyond the complaint and has no bearing on the allegations here.

The COURT. What have you to say about that, Mr. Isseks?

Mr. ISSEKS: It is part of this modification, as the memorandum shows, your Honor. I do not want to read from it at this time. It shows that the modification contemplated that they could not export, and if they did Soft-Lite Company would participate in the price.

The COURT. But you are asking a specific question, and I intend to rule on that specific question? The question is, did you participate in the fixing of prices of the foreign product.

Mr. ISSEKS. I will reframe the question.

The COURT. The objection is taken to that and I would sustain the objection.

Mr. ISSEKS. I will rephrase the question.

By Mr. ISSEKS:

Q. Was it part of the agreement that you had with the Bausch & Lomb Company with regard to the second quality Soft-Lite lenses, that your company would have to participate

73 in fixing the prices for the exporting of those lenses?

Mr. SEYMOUR. That is the same question, if your Honor pleases, and I object again.

Mr. ISSEKS. I understand it is a different question.

Mr. SEYMOUR. It deals with the price at which such lenses are sold abroad.

The COURT. I will sustain the objection.

Mr. ISSEKS. Your Honor, may I be heard?

The COURT. Certainly you may be heard.

Mr. ISSEKS: Your Honor, there is another theory, in addition to the theory that I have announced. I think we can under the cases—and I am prepared to submit the cases to your Honor—show a similar crime, namely, an agreement to price-fix lenses outside the United States which violates Section I believe 1 of the Sherman Act.

The COURT. I know the line of cases you are dealing with. Where you want to show the offense has been committed you can show that the defendant has had a disposition to commit offenses of that character.

Mr. ISSEKS. That is right.

The COURT. By showing that he has been doing a great many things like that.

Mr. ISSEKS. Yes, your Honor. There is a line of cases.

74 The COURT. But if you have evidence of the conspiracy charged of a direct character, I do not see why you need go into the collateral byways to prove it. It may be that you have to resort to that, and if that is the case I may have to reconsider the offer and the ruling. So far it seems you are going along on the theory that you are proving an explicit agreement with respect to interstate commerce, and now you are going into the matter of foreign commerce. If you are going to show a new charge and a new offense, which may be related but not charged in the complaint, I do not think we have reached the stage where I can let you proceed with it.

Mr. ISSEKS. I make an offer of proof, your Honor, and I now offer the document itself as showing the exact arrangement. I would like your Honor to look at it. This is a memorandum dated September 8, 1938, signed by Mr. Husson, showing the people who were present as I indicated before, and I understand there is no dispute as to the authenticity and counsel for Bausch & Lomb have told us they would not dispute the truth of the matter asserted.

The COURT. As I understand it the objection is purely as to relevancy.

Mr. SEYMOUR. Relevancy and materiality.

The COURT. Yes.

Mr. LEHRICH. The defendant Soft-Lite objects on the
75 ground that the statements made in that memorandum could not be binding on us. It is a meeting in which we did not participate, and anything that they agreed upon there would not be binding on us.

Mr. ISSEKS. I would like to know, because it will be important later, if counsel for the Soft-Lite Company expects to call Mr. Husson, or whether they do not dispute the truth of the matter asserted but rely on principles of law. Mr. Husson if he were here would testify, I assume, that he wrote that, and that it sets forth what transpired. We have tried to avoid the calling of witnesses at the request of Bausch & Lomb.

Mr. LEHRICH. And I say that even if Mr. Husson were here and did not deny what is contained in that memorandum.

The COURT. That his testimony would be just as irrelevant as the document.

Mr. ISSEKS. Yes. So it does not go to the matter of my calling him here.

Mr. LEHRICH. That is right.

Mr. ISSEKS. Will your Honor look at it?

The COURT. I will adhere to my ruling. You can reserve the right to re-offer it at a later stage.

Mr. ISSEKS. I offer it for another purpose, your Honor. I
offer it to impeach the witness, who denied flatly
76 that his company had anything to do with price-fixing of these exported second quality Soft-Lite lenses. I believe under Rule 43 of the Rules of Civil Procedure I may impeach an adversary, and I offer it for that purpose.

Mr. LEHRICH. You cannot impeach him by a statement in a memorandum by somebody else as to what transpired between two people.

Mr. ISSEKS. I understand counsel did not object to the competency of the proof, but objects just as if the witness were here. I think I can impeach the witness by a document as well as testimony.

The COURT. I will reserve ruling on that. Mark it for identification.

(Marked "Government's Exhibit 8" for identification.)

Q. There came a time, did there not, Mr. Singer, when you went to Rochester and attended a meeting in the board room, shortly after September 8, at which were present Messrs. Hallauer, Gordon Baird, Husson, and yourself?—A. I think so.

Q. Tell us what happened.—A. Well, I don't know what you are referring to, Mr. Isseks.

Q. I am sorry. I do not know how you testify you were present when you do not know what I am referring to. I thought you knew what I was referring to. You did have an arrangement with regard to second quality Soft-Lite lenses exported by Bausch & Lomb, did you not?—A. Yes, sir.

77 Q. Some time between 1924, you testified, and 1935. Now in 1938 did you attend a meeting at which Messrs. Hallauer, Gordon Baird, Husson, and yourself were present, at which you discussed what was going to happen with regard to these second quality Soft-Lite lenses exported by Bausch & Lomb?—A. I may have.

Q. Do you have any recollection about it?—A. No.

Q. I show you a document which I am going to have marked for identification, because it will save a lot of time.

(Marked "Government's Exhibit 9" for identification.)

Q. It is dated September 23, 1938, 3:30 p. m. Report on Soft-Lite meeting. Place: Directors' Room. Present: Carl Hallauer, Gordon Baird, Nat Singer, G. Husson. Topics: A and B. I am not going to read them, because we might get into a little dispute. There are two pages. I will show it to you [handing to witness]. I ask you, sir, whether it refreshes your recollection that you were present at a meeting at Rochester at that time? The answer to the question is yes or no.—A. Yes, sir; it does.

Q. The memorandum sets forth substantially what transpired at the meeting?—A. It does.

Mr. Isseks. I offer the memorandum in evidence, your Honor. I will show it to counsel.

Mr. Seymour. I object to it, if your Honor pleases. It is along the same lines as the previous objection which

78 your Honor just sustained.

Mr. Isseks. That is true, your Honor. I would like to have your Honor look at it first.

The Court. I will read it.

Mr. Seymour. I will wait until your Honor is finished reading it to state my further objections. If your Honor pleases, this deals exclusively, it seems to me, with transactions in foreign commerce.

The Court. It does not. Read the paragraph next to the last—on the first page, I should say.

Mr. Seymour. Well, it is not clear from the memorandum to what that refers; that is, whether it refers to something that is said to have been reported at that meeting, as to something that existed in previous agreements, or not. It is obvious this is not an agreement itself, therefore it cannot mean what it seems to say. But leaving aside that paragraph for the moment, the balance seems to deal clearly with questions of sales abroad.

The reason I am pressing this objection, and pressed it before and your Honor sustained it, is not that I am greatly concerned with what Mr. Isseks suggests as to other crimes, but this does not legally affect foreign commerce and is not within the Sherman Act in any event. In this case I do not want to get into the trial of a lot of collateral issues. This seems to me to be the same
79 as the question your Honor just sustained an objection to.

With respect to that paragraph, if that were offered separately I would like to discuss that. But as it is part of the memorandum and it is offered generally it seems to me the objection to the memorandum should be sustained.

Mr. LEHRICH. May I be heard?

The COURT. Yes; but make it very brief. We do not want a long debate.

Mr. LEHRICH. I am not going to repeat what Mr. Seymour said. From exhibits furnished to us by the Government it is apparent that Mr. Isseks is referring to agreements made by Soft-Lite with the United Kingdom and Max Wiseman. That is Paragraph (b). Now in this paragraph that your Honor just referred to, the next to the last paragraph, that refers to those agreements made with Wiseman and United Kingdom under which in those agreements Wiseman and United Kingdom agreed not to distribute in this country. They again come in now with proof of other conspiracies, with two other foreign manufacturers. For that reason I object to the inclusion of this memorandum.

Mr. ISSEKS. Your Honor, I agree as to the interpretation of the next to the last paragraph. But my position is this. Here you have the Bausch & Lomb Optical Company, a large manu-
80 facturer and distributor of lenses, also manufacturing exclusively so-called Soft-Lite lenses for these people. You have the witness admitting that the memorandum sets forth the substance of what transpired. I intend to offer foreign agreements because it is our position that Bausch & Lomb and Soft-Lite insisted that these foreign companies not import into the United States. Otherwise how would it take place? I submit, your Honor, this memorandum is admissible, and that your Honor on reflection will admit it.

The COURT. I do admit it. I overrule the objection. I think it does have an effect on interstate commerce, sufficient to make it relevant to the issues of the complaint. I know it does not make out the whole case, but it is one of the steps in the situation which requires detailing as you go along. I will overrule the objection as to Exhibit 9.

Mr. SEYMOUR. Exception.

(Government's Exhibit 9 for identification marked in evidence.)

By Mr. ISSEKS.

Q. Mr. Singer, your corporation organized a company, or had organized a company, in England, known as the Soft-Lite Lens Company, Limited, did it not?—A. Yes.

Q. A wholly-owned subsidiary?—A. Yes.

Q. That company did enter into an agreement with the United Kingdom Optical Company, Limited, and a separate agreement with M. Wiseman & Co., Ltd., did it not?

81 Mr. SEYMOUR. I object to this, if your Honor pleases, as certainly having no bearing on the complaint, and certainly not binding on Bausch & Lomb or the defendants represented by me. It is alleged as a step in the conspiracy, in the complaint, but there is no possible foundation for its admission against my client, whether or not it is admissible against others.

The COURT. I overrule the objection.

Q. You did make the agreements with these two companies?—A. Yes.

Mr. ISSEKS. I now offer in evidence, your Honor, three documents. The first is a letter dated September 10, 1938, written to Mr. Gus Husson, Bausch & Lomb Optical Company, Rochester, New York, signed Soft-Lite Lens Company, R. G. Landis. I would like to ask the witness one question.

Q. Who is Mr. Landis?—A. He is my associate.

Q. What was his position?

Mr. LEHRICH. Vice president of the company.

A. He is vice president of the company.

Mr. ISSEKS. Your Honor, this encloses the next two documents which I offer in evidence.

(Marked "Government's Exhibit 10" for identification.)

The COURT. Show these documents to your adversaries, and give them an opportunity to object, and then give me a chance to rule.

82 Mr. ISSEKS. I am very sorry, I assumed that they had been, because we get them from them. That first document I asked to be marked, your Honor, was furnished us by Bausch & Lomb Optical Company, and bears a stamp showing that it was received by Mr. Husson. May I make the offer of the other two documents before your Honor rules, and they can make the necessary objections.

The COURT. Do you offer them as a group?

Mr. ISSEKS. Yes; they are enclosures. This document encloses the other two, and I want to offer the enclosures. The next document is a letter dated August 10, 1938, addressed to the United Kingdom Optical Company, Limited, signed Soft-Lite Lens Company, Limited, Director, and no signature. I offer that as the next document.

(Marked "Government's Exhibit 10-A" for identification.)

Mr. ISSEKS. As Exhibit 10–B, I offer a document dated August 9, 1938, addressed to M. Wiseman & Co., Ltd., signed Soft-Lite Lens Company, Limited.

(Marked "Government's Exhibit 10–B" for identification.)

Q. I would like to ask you a question about Exhibit 10. That is Mr. Landis's signature [indicating], is it not?—A. I think so.

Q. I show you Government's Exhibit 10–A for identification, and ask you whether that is a copy of an agreement between your subsidiary, Soft-Lite Lens Company, Ltd., and the United Kingdom Optical Company, Limited? You will notice it
83 bears a stamp on the top of it, of your company, does it not—with initials, your initials and Mr. Landis's initials, and other initials?—A. Yes, sir.

Q. That is a copy of the agreement?—A. Yes.

Q. I show you Government's Exhibit 10–B [handing to witness], and ask you whether that is a copy of an agreement between M. Wiseman & Company, Limited and Soft-Lite Company, Limited, and direct your attention to the stamp on the top.—A. Yes sir.

Mr. ISSEKS. Your Honor, at this time I offer the three documents, and I have copies here for your Honor if your Honor cares to look at them.

Mr. SEYMOUR. I object to them as incompetent, irrelevant and immaterial as far as Bausch & Lomb and my clients are concerned. They relate to agreements made in England, apparently, between Soft-Lite Limited, which is not charged to be involved in this conspiracy, and some other English company. They seem to concern no matter in issue in this complaint. I do not raise the question that they are copies, but I do not see how in the absence of a charge that these companies were involved in this conspiracy that the mere fact the copies of these letters were sent to Mr. Husson can make them admissible against Bausch & Lomb.

The COURT. What is the basis of the claim of relevancy with respect to these?

84 Mr. ISSEKS. Your Honor, these agreements are the ones referred to in Government's Exhibit 9, namely, that these two foreign companies would agree not to supply, directly or indirectly, any pink or rose-tinted glass or lenses in the British Isles, United States of America, or Canada. It is our position that was done pursuant to arrangement between Bausch & Lomb Optical Company and Soft-Lite Company. The witness is shaking his head.

The COURT. Is it your contention that you are offering those subject to proof of that fact, that there was such an agreement?

Mr. ISSEKS. The letters say so.

The COURT. Call my attention to the letter which says that this was as the result of an agreement between the two defendants here.

Mr. ISSEKS. No; your Honor, we rely on the memorandum which your Honor admitted in evidence, plus all the facts in the case which will be developed. We have no piece of paper which says they agreed, and we intend to prove it.

The COURT. You intend to prove it?

Mr. ISSEKS. That is our position. We will be able to prove it before the end of the case.

Mr. LEHRICH. May I be heard a minute, your Honor?

The COURT. Yes.

85 Mr. LEHRICH. Page 5, Paragraph 9, Mr. Isseks charges under the title "Background of the Conspiracy" one, and only one, agreement between Bausch & Lomb and Soft-Lite Lens Company, made in 1924. Now we have agreements made in 1938 between Soft-Lite, Limited, and two foreign companies not defendants in this case. How that can be part and parcel of this conspiracy under this charge I fail to see, and I therefore object to it on behalf of this defendant.

The COURT. I am trying to find out what the relevance of these agreements in the domestic situation that you are trying to prove is.

Mr. ISSEKS. We claim a domestic arrangement of a certain type, namely, that Bausch & Lomb will manufacture lenses exclusively for Soft-Lite. There is a modification of that which comes later on, which is to the effect that Bausch & Lomb will only export. Then there is a modification of that modification, which is this—that they will have in certain foreign countries, in this case Great Britain, a certain arrangement with regard to Soft-Lite lenses, and those two companies will agree not to ship in the United States. We say that agreement not to ship into the United States was made by Bausch & Lomb and Soft-Lite. Now that is the only portion of those foreign agreements that we are interested in.

86 The COURT. Let me look at it. Photostats are very hard to read.

Mr. ISSEKS. I had the parts marked on one copy.

The COURT. Then show me the specific things that you want to direct my attention to.

Mr. ISSEKS. In the case of the first one, of the United Kingdom, the only paragraph that has relevancy on this is the one on the very top. I think as to the other it is exactly the same thing. Yes, in both cases they are exactly word for word.

Theo COURT. This is written by the wholly owned subsidiary of the defendant Soft-Lite?

Mr. ISSEKS. Yes, sir.

The COURT. Let us pass on these one at a time. Exhibit 10-A is admitted. Exhibit 10 is the communication, and I will admit that.

Mr. ISSEKS. 10-B is the paragraph on the top of the page.

The COURT. Exhibit 10-B is admitted.

(Government's Exhibits 10, 10-A, and 10-B for identification now marked in evidence.)

By Mr. ISSEKS:

Q. Mr. Singer, about a year thereafter United Kingdom Optical Company cancelled the arrangement, did it not?—A. It did.

87 Q. Your company advertises extensively, does it not—Soft-Lite Lens Company?—A. Yes, sir.

Q. In this country?—A. Yes, sir.

Q. What mediums of advertising?—A. We use some of the leading national magazines.

Q. Please mention them.—A. Life, Saturday Evening Post, Time. Those three.

Q. Any others?—A. Not at present.

Q. Have you any copies of the advertisements here?

Mr. LEHRICH. Yes; I have some.

Mr. ISSEKS. May I have some, please?

Mr. LEHRICH. I will pick some out for you.

Mr. ISSEKS. Yes; I would like either 1, 2, 3,—any number. I will ask the witness a question in the meantime.

Q. Do you advertise in the advertisements the relationship between your company and Bausch & Lomb?—A. No.

Q. Do you state in the advertisements that the Soft-Lite lenses are manufactured by Bausch & Lomb for you?—A. It is exclusively for us, yes.

Q. You state that?—Yes.

Q. That is all I want to prove.

Mr. ISSEKS. Government's Exhibit 1-A attached to the memorandum by Mr. Buedingen has a list of Optical Service Corporation customers. That is in 1924.

Q. Those people were what is known as jobbers or whole-

88 salers?—A. Yes.

Q. And you sold only to them?—A. Yes, sir.

Q. Then you had a list here of retail licensees. Did you sell to them?—A. Billed through the wholesaler.

Q. I wish you would answer my question, please. Did you sell to them directly?—A. Mr. Isseks, I would like to answer your question. May I explain that. We did the initial missionary work on retailers and wholesalers. We would like to take the credit for the selling of the retailers who became stock dealers. Sometimes we did it all, sometimes the wholesalers did it. But the final billing

was always through the wholesaler. He was our distributor. It has been our policy ever since.

Q. You did not sell directly to the retailer?—A. Not to my recollection.

Q. You sold to the wholesaler?—A. Yes.

Q. This memorandum which is dated 1924, June 11th, has a group called "List of Optical Service Corporation customers."—A. Yes.

Q. And they have a list of retail licensees. Did you have any written arrangement with these people, either the customers, wholesalers or the licensees?—A. No.

Q. Did a time come when you had a written arrangement with the so-called retail licensees?—A. Yes.

Q. When was that, about?—A. 1933.

89 Q. Didn't you have any before that?—A. No.

Q. None at all?—A. Will you ask that question again, please?

Mr. LEHRICH. I think counsel ought to explain what he means by "written arrangement."

The COURT. The witness wants the question read.

Q. (Read by reporter.)—A. Not of that type.

Q. Did you have any written arrangement of any type? Prior to 1933?—A. Written agreement? No.

Q. Did the licensee prior to 1933 have a placque of any kind in his office?—A. Customer identification, yes.

Q. Did he have any certificate of any kind?

Mr. SEYMOUR. If your Honor please, I merely want to note that as to this line, which deals entirely with the Soft-Lite operations, it seems to me it is inadmissible as against Bausch & Lomb. I would object except for your Honor's indication that you prefer to take it subject to connection.

The COURT. Obviously I would have to admit it with respect to Soft-Lite. Of course you can address your motion more to the fact that the evidence should not be considered as to Bausch & Lomb.

Mr. SEYMOUR. I would object to this line, as against Bausch & Lomb.

90 Mr. ISSEKS. It is offered again Bausch & Lomb, your Honor.

The COURT. Of course.

Q. Did the licensee prior to 1933 sign any application for license—a form application, I mean?—A. Yes.

Q. Do you have a copy of that form?—A. We have.

Q. In the courtroom?—A. We have in evidence.

Q. We have made a request for it.—A. We have it somewhere.

Mr. ISSEKS. Your Honor, we made a request for it two or three weeks ago, and I would like to get it.

The COURT. Then it will be produced now.

(Mr. Lehrich hands paper to Mr. Isseks.)

Mr. ISSEKS. Yes; counsel has handed me two pieces of paper which have printed on them "Application for Soft-Lite License." I think I will take them one at a time because I will have to ask the witness what they are about.

91 Mr. ISSEKS. This is dated March 12, 1928. I think I had better have it marked for identification so I can talk about it, and if counsel do not object I would like to hand the Court a copy [handing to Court].

(Marked "Government's Exhibit 11" for identification.)

Q. I show you Government's Exhibit 11 for identification and ask you first of all whether that is a photostat of the original document in your files?—A. Yes.

Q. Was that form in use prior to 1928?—A. I think that we used it a year before.

Q. Was that the form used from 1928 up to 1933?—A. It may have been we changed it from time to time as our advertising materials were changed. You see that specifies specific advertising material.

Q. I want to see if we can get a little help as to how this thing works. Up in the right hand corner is "Plan B. Riggs Optical Company. A. K. Lorsch, 10/26/27." Does that have a meaning?—A. Yes; A. K. Lorsch was a salesman working for the Riggs Optical Company in Los Angeles, California, and he sent in an order amounting to 100 pairs, which came under Plan B, an order for lenses to be shipped direct to the retailer. Or perhaps if that wholesaler had stock on hand he shipped it, but primarily he sent us the request of the retailer for the de-

92 sired advertising and the material the retailer wanted to use in his practice, and we sent the material direct to the retailer.

Q. Here it says firm of L. W. Clark. That is the application for a license?—A. That is the retailer he sold it to.

Q. He is applying for a license?—A. Yes.

Q. He gives his location in California and then he says "Recommended by Riggs Optical Company, Los Angeles."—A. Yes.

Q. Then the signature does not appear on this one, but Mr. Landis's signature appears at the end?—A. Yes.

Mr. ISSEKS. I offer this in evidence.

Mr. SEYMOUR. I object to it on behalf of Bausch & Lomb. I don't see what possible bearing it can have against them.

The COURT. Received with respect to Bausch & Lomb, subject to proof of the conspiracy, of course. It is received against Soft-Lite for all purposes.

(Government's Exhibit 11 for identification received in evidence.)

(Recess until 2:15 p. m.)

93 AFTERNOON SESSION

Nathaniel Singer, resumed the stand.

Direct examination continued by Mr. ISSEKS:

(Paper marked "Government's Exhibit 12" for identification.)

Q. Mr. Singer, I show you the other form that your counsel produced, which is dated 1927, and which I have had marked Government's Exhibit 12 for identification, and I ask you whether this form of application, which happens to be filled out, was one used in 1927 for retail sellers of Soft-Lite lenses?—A. Yes, sir.

Mr. ISSEKS. I offer this in evidence.

Mr. SEYMOUR. Same objection, as far as the Bausch & Lomb defendants are concerned, and I suppose your Honor makes the same ruling.

The COURT. Yes.

Mr. SEYMOUR. Exception.

(Government's Exhibit 12 for identification received in evidence.)

Mr. ISSEKS. I intend to interrogate this witness later on in connection with these exhibits further.

Q. Do you know whether or not, other than the 1933 forms, which I will come to a little later, were there any applications for retail licenses than the one used in 1927, Government's
94 Exhibit 12, and the one used in 1928, Government's Exhibit 11?—A. So far as I can remember, those are the only ones, Mr. Isseks.

Q. There was a 1927 form, which was Government's Exhibit 12. Was that used for any period of time prior to 1927, the date of this particular one?—A. I think that started in 1927.

Q. Bausch & Lomb manufactured the Soft-Lite lenses for your company and then shipped them to your place of business in New York, or did they ship them elsewhere?—A. To us.

Q. To you in New York?—A. Yes, sir.

Q. Now there was a so-called registered protection certificate put in each Soft-Lite package of lenses, was there not?—A. No; not by them.

Q. I am sorry. I did not intend to suggest that they put it in.—A. No; Mr. Isseks. I mean that we sent it to the wholesalers along with a shipment. If we send 500 pairs we will send 500 certificates with them.

Q. Who puts the certificate in the lens package?—A. In where, sir?

Q. I hand you a piece of paper which has been furnished me by your counsel and I ask you what that is?—A. That is what we call a protection certificate; Soft-Lite protection certificate.

Q. My question is, who puts this document——

95 Mr. Isseks. I will offer it in evidence in a minute.

Mr. Lehrich. I object. Counsel is assuming that the document is in the lens package. It is not in the lens package.

Q. Where is the document put?—A. What document?

Q. The one I showed you.—A. That is sent out by our stock clerk to the wholesaler at the time he makes a shipment of lenses. It does not go with the lenses.

Q. Isn't there a time which comes when it is put in the particular lens package sent to the retailer?—A. What is done by the wholesaler?

Q. Yes.—A. The wholesaler is supposed to send one of those to the retailer at the time he sends a pair of Soft-Lite lenses.

Q. With each pair?—A. That is what he is supposed to do.

Q. And are instructions given to him to that effect by your company?—A. He is so advised, yes.

Mr. Isseks. I offer at this time one of those certificates, your Honor, and I assume counsel has seen it. I would like to have it marked as "Government's Exhibit 13."

Mr. Seymour. I object to it as incompetent, irrelevant and immaterial as far as the Bausch & Lomb Company are concerned.

The Court. I will take it, and take it subject to connection as far as Bausch & Lomb is concerned.

(Marked "Government's Exhibit 13.")

96 Q. Now I show you this certificate and direct your attention to the fact that it is generally folded with the outside showing and having the following words: first you have your emblem, "Soft-Lite Lens, New York" and then you have "Registered protection B," and a number "Certificate Soft-Lite lens."—A. Yes, sir.

Q. Each certificate has a different number, has it not?—A. Yes.

Q. The three your counsel furnished have three consecutive numbers; as far as you know, they are numbered consecutively?—A. Yes, sir.

Q. And are there any written instructions given to the wholesaler in regard to the manner in which they are to be sent in a package that goes to the retailer?—A. Not that I know of.

Q. How do the instructions get to them?—A. We tell them to issue one of these certificates with every pair of Soft-Lite lenses so the retailer knows he has got the genuine.

Q. Is that all done orally?—A. I think when we originally sell a stock of our lenses to a wholesaler we tell him to make sure that the public gets a genuine product. We have an identification

which we call a protection certificate and we will send him one with every pair of lenses and won't he please send it to the retailer when he sends them to the retailer.

97 Q. Do you know of any other written piece of paper that goes with those instructions in connection with an order?—A. Nothing in the form of instructions, but we use it in bulletins to the customers.

Mr. Isseks. I call upon counsel, if they have one of those bulletins, to produce it. I have never seen it. I would like to offer it in evidence. Counsel suggested they have an advertisement this morning, and if they have it now I would like to mark it in evidence.

(Paper handed to counsel.)

Q. I show you the issue of April 9, 1941, of the Saturday Evening Post, page 44, the lefthand side length of the page—I don't know how long it is—— A. Single column, they call it.

Q. (Continuing.) And ask you if that is an advertisement of your company for Soft-Lite lenses?—A. Yes, sir.

Mr. Isseks. Your Honor, I offer it in evidence. I suppose we can have it duplicated later on and then I want to call your Honor's attention to a statement therein.

Mr. Seymour. I have the same objection to the admissibility of that as against Bausch & Lomb that I have had as to the other documents, as effecting Soft-Lite exclusively

The Court. The same ruling.

Mr. Seymour. Exception.

98 Q. May I ask one question: the advertisement says on the bottom in plain type "Soft-Lite Lenses, made by Bausch & Lomb solely for the Soft-Lite Lens Company are available exclusively from Soft-Lite licensees and a carefully selected group of skilled refractionists and skilled opticians right in your own community." Is that the usual statement in your insert in connection with your advertising of Soft-Lite lenses?—A. I would say so.

Q. And here too you have "There is only one genuine Soft-Lite, identified by this protection certificate," and there is a copy of the certificate.—A. Yes, sir.

Q. And that is usually inserted in the advertisement?—A. Yes, sir.

Q. How long a period has your company been advertising your Soft-Lite lens with the usual provisions?—A. Mr. Isseks, the provision would be modified from year to year as the agency would consider the value of that type of copy in its ad as part of the advertising. We do not always use that phraseology. We always, for the last three years, had a protection certificate, and that statement with it, because that is the protection that we want to give the

public. The other would be modified as the agency would deem it advisable.

Q. But you have for a number of years stated in that advertisement that the lenses are manufactured solely for your company by Bausch & Lomb?—A. Yes, sir.

99 Q. Now in Government's Exhibit 1 there was attached a list of wholesalers. Has that list of wholesalers expanded from time to time?—A. Oh, yes.

Q. And approximately how many wholesale distributors do you have now?—A. About 97, I think.

Q. And, that includes, does it not, the wholesale distributing houses known as the Bausch & Lomb affiliates?—A. Yes, sir.

Q. And how many wholesalers are there throughout the United States as far as you know?—A. Well, I would not know that, Mr. Isseks. We just seek the cream of the trade. It depends on what a manufacturer considers a wholesaler to be. We do not know.

Q. You know there are others?—A. Oh, yes.

Q. Now has your company considered the type of wholesaler you would like to have representing your company?—A. Yes, sir.

Q. And you have a definite policy in that connection do you not?—A. Yes, sir.

Q. Will you tell us, please, what that policy has been?—A. We have always been interested in having our product distributed by the type of wholesaler whose character and reputation would indicate that he would be interested in buying or selling our product for our mutual interest and advantage. That meant he had

100 a reputation; that he was serving the finest quality material and soliciting business from the better grade retailers, because our product was the product that would only interest that type of wholesaler or retailer.

Q. You have already testified you sold only to wholesalers and not retailers?—A. We billed only the wholesaler and not the retailers. We feel we help sell retailers but from the standpoint of getting them interested in our product.

Q. I want to get this straightened out, because we have had a clash before——A. No clash.

Q. When you sell the product to a wholesaler does he pay for it and get title?—A. Yes, sir.

Q. Anything he does thereafter in connection with the retailer title goes from the wholesaler to the retailer?—A. That is his business entirely.

Q. But you never yourself pass title to the retailer?—A. Not as far as I remember, except my father did some of that, or something on that order twenty years ago.

Q. I am talking about——A. For the last fifteen years or so?

Q. That is right.—A. No; all through the wholesaler.

Q. You sell to the wholesaler and he in turn sells to the retailer?—A. That is right.

Q. Now do you consider one a wholesaler who is a price
101 cutter, one you would prefer not to deal with?—A. Would you please tell me what you mean by "price cutter," Mr. Isseks. There are so many definitions.

Q. I will take your definition. You define it.—A. Well, I have not used the words.

Q. Never?—A. I don't say I never used the word. One that does not come up to our point of view; a man's character, type of business reputation.

Q. Would you say your company has never used the designation "price cutter" in connection with determining whether or not you do business with anybody?—A. Mr. Isseks you jump. You ask whether I used it. The word "price cutter" would come up always in conversation in the industry. So far as we are concerned, when we solicit a wholesaler we are interested in the character of his business, because it was not the type that would be representative for our type of selling quality, ideas, good product, at a fair price; it would not be any good to him or to us if he took it on.

Q. I will take your word. You would not accept as a wholesaler one who did not sell first quality?—A. I do not think so. Unfortunately most wholesalers have to sell seconds, too.

Q. You said something about quality?—A. That is right,
102 quality of their reputation. Their character. Some wholesalers specialize in cheap stuff. Others sell it because they have to. It is the first type we are vitally interested in.

Q. Have you refused to deal on a wholesale basis with anybody who asked to be a wholesaler?—A. May I have permission to re-word that in my answer?

Q. Sure. You go ahead.—A. We were not interested in selling Soft-Lite lenses to wholesalers who were not the type of character we thought would do us good. Wholesalers of the type we do not care for would ask us if they could buy our lenses and we said we were not interested and it was not "for your good or ours."

Q. My question is, were there persons who claimed to be wholesalers who came to you and asked to be distributors for your lenses and that you turned down?—A. Yes, sir.

Q. Do you remember the names of any of those people?—A. New Era Optical Company.

Q. Where are they located?—A. Chicago.

Q. Do you remember when that was, about?—A. About fifteen years ago.

Q. Do you remember why you turned them down?—A. Yes.

Q. I will ask you why?—A. They were doing a mail order business, selling all kinds of materials to registered optometrists and non-registered optometrists, to anybody that would pay
103 their offered inducement for price and tie up with inferior quality, and we felt they would only use our product as a leader or come-on and not give distribution, and there were others of that kind that would apply and we would not be interested in them.

Q. Take one at a time. You mentioned New Era of Chicago. Now please tell us who were these other people?—A. The Specialty Optical Company, Kansas City. That did not come to me. It may have come to one of our representatives.

Q. It was brought to your attention?—A. Yes, sir.

Q. Surely.—A. The same type.

Q. They were a mail order house or sold at any price? And you did not like it?—A. That is right, and solicited all kinds of accounts that would not do us any good if they took our line on.

Q. And they sold to people who were not licensees?—A. No, that is not it. All wholesalers sell to their own customers. They sold to the kind of retailers who would not be of the type that would be likely to be of any good to Soft-Lite Lenses, and that is what we thought of.

Q. I am coming to that question later on, but let me ask, isn't it a fact that at least since 1933 no wholesale distributor of yours is permitted to sell to any retailer other than a licensed retailer?—A. It is not.

Q. Don't you so provide in your price list, that he can sell
104 only to a licensed retailer or to an Orthogon licensee?—A. Yes, our policy is, we supply our lenses to all—excuse me for interrupting—to all Soft-Lite or Orthogon dealers. As to the adherence to the policy, it depends on the type of business he has, Mr. Isseks.

Q. Don't you tell the wholesaler that is what he is supposed to do?—A. Yes, sir.

Q. And that has been the policy since 1933?—A. Yes.

Q. And the Orthogon licensee, so we don't get confused, is the Bausch & Lomb licensee?—A. The Orthogon licensees are the Bausch & Lomb dealers.

Q. Thank you. Let us take these companies up, because you and I had a misunderstanding, and let us get it straightened out: besides the Kansas City outfit and the Chicago outfit, will you tell me anybody else who applied for permission to buy from you Soft-Lite lenses, and you turned them down?—A. There was the Gulf Optical Company in Texas.

Q. I am going to ask about Gulf, but it was Houston, Texas, isn't that right?—A. Galveston or Houston. They are a small outfit.

Q. Mr. Smith was the man down there?—A. Yes, sir.

Q. You went down to see him, didn't you?—A. No, sir, I did not.

Q. Did he come to see you?—A. He was in New York some years ago when he worked for one of the wholesalers. I do not think I have seen him for some years.

105 Q. Didn't he talk to you personally?—A. I do not know. I may have run into him in Chicago some years ago.

Q. Tell us what happened when he asked you to become a distributor, and what happened?—A. We asked him?

Q. He (Smith) asked you. I am sorry.—A. He asked us for a retail license, Mr. Isseks, and I think we made him a retail licensee and he wanted to become a wholesale distributor and we asked him time and time again for a financial statement and an indication of the type of business he did, because that is definitely our policy, not to take on as a wholesale distributor somebody whose sales and purchases would simply be withdrawn from our present source of distribution and not add to our present distribution. We were very careful.

Q. He was not turned down for the reason the other people were turned down; mail order, price cutting, mail order advertising and poor quality?—A. No, we did not know what type of operation he had established. We generally wait a while before we do anything with him.

Q. Now who else besides these three people you mentioned—A. Frankly, I do not know of any others.

Q. We will come to that. Now was there more than one type of distributor that your company had?—A. At one time, yes, sir.

106 Q. What period of time?—A. Well, we had really three classes of wholesalers; he who bought like a retailer; he who bought between a retailer and a distributor—we called him a Class A wholesaler—and he who is a distributor.

Q. And were the distributors in fact just a few? Were they not?—A. What?

Q. Just a few distributors.—A. There are always about ten distributors to one class A wholesaler.

By the Court:

Q. Which is the largest, the distributor is your largest?—A. Yes, sir.

Q. And your wholesaler is your second?—A. Class A wholesaler. That was a wholesaler who generally was a beginner. We always

had to have an initial investment, and if he said "I do not know whether I can stand the gaff" we would say "Tell us what you already have put in, put in an intermediate stock, buy at a little less favorable discount."

Q. You call him class A wholesaler?—A. Yes, sir.

Q. And what was the distributor?—A. The other was just a retail wholesaler; he bought as a retailer; his business was merely of the type that catered to the stock trade.

Q. But you sold him direct?—A. No. If he was not a distributor or class A wholesaler we would not sell him.

107 Q. He had to buy through whom?—A. Through a wholesaler, yes, sir, until such time as he found it to his interest to put in necessary stock to buy on a better basis.

Q. There were more class A wholesalers than distributors?—A. No. Probably at no time was the percentage more than about one class A wholesaler to about seven or eight distributors.

Q. You mean more distributors?—A. Yes, sir.

Q. Distributors were your largest?—A. Yes, sir, they bought at the best price. The other was the fellow that traded in between.

Mr. LEHRICH. May I call your Honor's attention to the fact that there is no subdivision there. We have no class A wholesalers now and that classification was eliminated at the time the Robinson-Patman Act was construed and at the advice of counsel they were asked to withdraw the classification and it has been so since 1939.

Mr. ISSEKS. There is no dispute about that. We will offer the documents later on.

Q. Now I show you a document which is dated October 31, 1927, signed Optical Service Corporation——

Mr. ISSEKS. I will have it marked for identification.

(Marked "Government's Exhibit 15" for identification.)

108 Q. (Continuing.) And I ask you whether as of 1927 that sets forth the classification of the persons through whom your product was distributed, namely, distributors and Class A wholesalers, and the third group you mentioned, and with whom you had no direct sales?—A. That reference, that refers to varying discounts applying to the three groups on special products, namely, the Punktel and Kryptok in Soft-Lite.

Q. But the groups that are mentioned here at the ones you mentioned?—A. Yes, sir.

Mr. ISSEKS. I offer it in evidence, your Honor.

The COURT. What is it, a letter or memorandum?

Mr. ISSEKS. It is a memorandum and I have a copy for your Honor to examine. I have shown counsel a copy.

Mr. SEYMOUR. It looks like a form letter. I object to it as against the Bausch and Lomb defendants, and I have assumed,

as counsel has been interrogating the witness with respect to the Soft-Lite marketing details, that your Honor is taking all of that, as far as we are concerned, subject to connection.

The COURT. Let there be no doubt about it. I am taking the story of the Soft-Lite System of distribution subject to its being established that Bausch & Lomb was in some way involved in the situation.

Mr. SEYMOUR. Yes; so I don't need to object so often as to the obligation of the Government to connect it.

(Marked "Government's Exhibit 15".)

Q. The writer was your general manager, Mr. Landis?—A. That is the vice-president.

Q. He was the writer of this.—A. His initials would indicate that.

Q. And it went to your distributors and Class A wholesalers?—A. That is right.

Q. And not to your licensees?—A. Not to the wholesalers that are not distributors or Class A. That indicated to them the price that they were to bill the retailer-wholesaler.

Q. I want to have you explain what this discount came to. Your distributor as to your Punktal Soft-Lite shade stock lens was entitled to a discount of 20 per cent and 33⅓ per cent?—A. Yes, sir.

Q. And the class A wholesaler was entitled to 20 percent and 25 percent?—A. Yes, sir.

By the COURT:

Q. From what?—A. From the list price.

Mr. ISSEKS. I am sorry.

The COURT. I just wanted to be clear whether it was the net for the distributor.

By Mr. ISSEKS:

Q. It is always from the list price, is it not?—A. Yes, sir.

Q. And the retail licensee —— A.—Not up to this moment, Mr. Isseks, you and I considered that wholesaler licensee.

Q. That is right, and he is what you call a wholesaler. You call him a wholesaler—not a retailer licensee.—A. He was just a wholesaler but he came under the classification of retailer because we did not service him at all.

The COURT. Which class are you talking about?

The WITNESS. The third column. They both bought alike.

The COURT. You would not sell to the third group.

The WITNESS. No.

Q. But there was a discount to which he was entitled when he bought from the purchaser and the wholesaler?—A. That is right.

Q. Attached to Government's Exhibit 1, the document you sent to ——

By the COURT:

Q. Can you explain to me what you mean by 20 percent and 25 percent?—A. Well, a dollar less 20 percent is 80 cents, and an additional 25 percent makes it 60 cents net.

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Q. What is the reason for expressing it in two percentages instead of one?—A. The standard Punktal was based on 20 percent, so everybody got 20 percent who was a stock buyer. If he was a class A he got an additional 25 percent for carrying. If he was a distributor he got one-third instead of 25 percent.

Q. What was Punktal at that time?—A. It was a corrected lens.

Q. Made by whom?—A. Bausch & Lomb.

Q. And Soft-Lite Kryptok?—A. That is a bifocal.

Q. Made by whom?—A. At that time made by Bausch & Lomb.

By Mr. ISSEKS:

Q. And what is Duo-Site?—A. That is a trade name on a fused bifocal lens made with a higher index of refraction.

Q. Now this reference to licensees in Government's Exhibit 15, is that the same kind or group of people that is called the retailer licensees in the list that you sent Mr. Hammele in 1924?—A. I should say so; same type.

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We differentiated between the three classifications because of their carrying stocks. The Class A wholesaler carried stock of X pairs of lenses, the distributor carrier a stock of perhaps X plus Y pairs. When they got something on prescription from Bausch & Lomb, there was no stock investment in that, and they got the same discount no matter who they were, if they were a wholesaler. All were treated alike then.

The COURT. So the third group could not get it from Bausch & Lomb at all?

The WITNESS. No. Well, they could, your Honor, but it would have to be billed by the wholesaler, at 2 per cent for cash, or whatever the prescription discount was.

MR. ISSEKS. I now offer in evidence, your Honor, two documents showing exchange of correspondence between a wholesaler who applied for a right to distribute, and Soft-Lite Lens Company. I offer in evidence as the next Government's Exhibit, No. 16, a letter dated April 18, 1935, addressed to Soft-Lite Lens Company by Bushwick Optical Company, and as Government's Exhibit 17 a reply dated April 24, 1935, addressed to the Bushwick Optical Com-

pany, signed Soft-Lite Lens Company, Donald Steers. I will ask the witness one question before your Honor rules on it.

Q. I ask you who Mr. Steers was, at that time in April 1935?—A. One of our clerks.

113 Q. Is he still with your company?—A. No, he has not been for some years.

The COURT. Any objection to that?

Mr. SEYMOUR. Except my continuing objection.

The COURT. Yes, I am aware of that. You need not repeat it.

(Marked "Government's Exhibit 16 and 17.")

Q. Your company had as one of its wholesale distributors in 1924, Government's Exhibit 1-A, a company called E. W. Reynolds Company, Los Angeles, California, did it not?—A. Yes, sir.

Q. There came a time, did there not, when your company refused to distribute its products through E. W. Reynolds of Los Angeles, California?—A. Yes, sir.

Q. And a letter to that effect was written to them?—A. Yes sir.

Mr. ISSEKS. I offer the letter in evidence, your Honor, as the next exhibit, Government's Exhibit 18. It is dated March 18, 1938.

The COURT. Any objection to that?

Mr. LEHRICH. No objection.

The COURT. Except the continuing one.

(Marked "Government's Exhibit 18," in evidence.)

Q. In Government's Exhibit 18 Mr. Immig—who is he, of your company?—A. He took Mr. Steer's place as corre-

114 spondence clerk.

Q. It says: "Inasmuch as the E. W. Reynolds Company has been acquired by the American Optical Company, they have, of course, been automatically removed from the list of Soft-Lite Wholesale Distributors. So that, in the future, it is not possible to supply you with Soft-Lite Lenses in any form with the exception Panoptik Soft-Lite Bifocals."—A. That is true.

Q. That was a firm policy of the Soft-Lite Company, not to distribute any of its lenses through the American Optical Company or any of its branches?—A. Yes, sir.

Mr. ISSEKS. At this time, your Honor, I offer as the Government's next exhibit a memorandum dated January 13, 1939, written to Mr. Leo Schlemmer, from the Lens Sales Department, signed A. D. B., who is identified on the memorandum as A. D. Buedingen, whom the witness referred to before. This, your Honor, was furnished to us by the Soft-Lite Company, and before your Honor rules I would like to ask the witness a few questions.

Q. Was Mr. Schlemmer in your organization?—A. No, sir.

Q. He was in the Bausch & Lomb organization?—A. Yes, sir.

Q. The J. H. V. on this document was Mr. Vernon, who used to be one of your salesmen?—A. Yes.

Q. In 1939?—A. Yes.

115 Q. Do you have any explanation as to how a copy of this memorandum got into your files, of your company?—A. I have not seen it.

Q. Well look at it. It is obvious.

Mr. LEHRICH. Mr. Isseks, I am told by the Bausch & Lomb people here that J. H. V. refers to J. H. Vogel of Bausch & Lomb.

A. I never heard of a think like that.

Q. Never saw it?—A. No; I do not know what that is.

Mr. LEHRICH. It is one of their employees by the name of Vogel.

Mr. ISSEKS. I may be misinformed, your Honor.

The WITNESS. I never saw that.

Q. You do not know whether the J. H. V. here refers to your Mr. Vernon or their Mr. Vogel?—A. It definitely could not, unless you have some proof to the contrary. He is an outside man.

The COURT. Is it J. H. Vernon?

The WITNESS. No, J. H. V.

Mr. ISSEKS. I said J. H. V. I would like to have counsel let me know, because I do not know the answer. Maybe they know.

Mr. LEHRICH. Counsel for Bausch & Lomb at Rochester is here, and he says he knows of his personal knowledge that that is

116 the stamp used regularly up there in correspondence with which J. H. Vogel had some connection. He identifies it as that stamp.

Mr. ISSEKS. Your Honor, I offer the document in evidence. It is an interoffice communication of Bausch & Lomb. I offer it for the truth of the matters asserted therein. I understand that there is no dispute as to the authenticity and Mr. Seymour has indicated to me that it won't be necessary to produce the witness as to the truth of the matters asserted.

The COURT. Is there any objection to the document?

Mr. LEHRICH. No.

(Government's exhibit admitted.)

Mr. SEYMOUR. I do think it is a rather unfortunate practice, unless counsel for the Government is very sure, to attempt to attribute any significance to the origin of these photostatic copies. The fact of the matter is that we have been furnishing each other documents for quite a long time, and none of us knows now where they originally came from, although obviously they came from the possession of the defendants. The fact that Government counsel got a specific document from Mr. Lehrich or from me has no significance, and I do not think counsel should preface his offer.

with a statement of that kind. I do not want any inference to be drawn from its place of origin.

Mr. ISSEKS. I agree with counsel. I was misinformed by one of my associates.

117 The COURT. Who is Mr. Schlemmer?

Mr. ISSEKS. He is a Bausch & Lomb, the witness has testified.

The COURT. And all of these are names of people with Bausch & Lomb. There are no Soft-Lite people here.

Mr. ISSEKS. Apparently I was misinformed. There is a Mr. Vernon whose initials are the same. I was misinformed and I withdrew the statement, on the statement of Mr. McQuilkin, who is a member of the bar of this court, I understand. I will take it.

Q. I show you the memorandum, Mr. Singer, and ask you whether the statement made by Mr. Buedingen regarding the distribution of Soft-Lite lenses sets forth the policy of your company?—A. Mr. Isseks, this is based on our instructions to Bausch & Lomb not to ship our lenses to those firms. That is all it is. It is an inter-office communication based on what we instructed them to do in dealing with our product.

Q. You testified before that Bausch & Lomb manufactured the lenses for you, shipped them down to you, and you sent them to the distributors.—A. That is right.

Q. What have they got to do with the distribution, if they sent them to you?—A. A very important point. They fill prescription orders for all wholesalers whose names appear on our list.

118 Q. Do you mean Bausch & Lomb?—A. Those prescription orders, and bill them to us. We did not want any prescription billing to those wholesalers once we ceased doing business with them.

Q. Who filed the prescription orders, Bausch & Lomb?—A. Bausch & Lomb do special prescription work of the type that we do not normally carry in stock. It amounts to about one-half or one-tenth of a percent of our volume. Instead of E. W. Reynolds, for example, writing us for a cataract lens in Soft-Lite, something very unusual, he sends an order direct to Rochester. Rochester looks at their list of wholesalers, that we supply them. If he is on the list they make it, if he is not they send it to us, and they write to Reynolds that this is for Soft-Lite—"We haven't anything to do with it, you will have to send it to Soft-Lite." If he is on the list they grind the lenses, a pair at a time, they ship the lenses to the customer, and they send us a prescription bill.

Q. That is the unusual way?—A. Yes, very unusual.

Q. The normal way is for the retailer prescription licensee——A. I am talking about the wholesaler.

Mr. LEHRICH. Your Honor, the confusion here is in the use of the word "prescription" by Mr. Singer. A prescription order is a special order, an unusual order.

119 The COURT. I presume he means an order for a single pair of lenses.

Mr. LEHRICH. As something not ordinarily stocked by us or by Bausch & Lomb. When they make it up to order they ship it to one of our customers if he is on our list to begin with.

Q. Let us start at the beginning. I am a customer. I walk in to someone having a sign dispensing——

The COURT. By "customer" you mean you are a consumer?

Q. An individual. I walk in and tell him I want a pair of lenses. I have a prescription in my hand that Dr. Jones gave me. He sends that to a wholesaler, does he not, normally?—A. Yes, sir.

Q. That wholesaler for the sake of argument we will call an independent wholesaler, Smith & Company in New York. Does he grind that himself?—A. He does.

Q. We are not talking about that kind of case in Government's Exhibit 19?—A. We are.

Q. We are?—A. Yes, sir.

Q. I asked you whether that wholesaler Smith takes that lens or those lenses that he got from the dispensing retail licensee, that I got from Dr. Jones, and I asked you whether he sent that to an independent wholesaler and whether he ground it.

120 Does he grind that himself?—A. He does. If he has the product to grind from. It may be an inch bifocal, something unusual. That is what I am talking about.

Q. Assuming it is unusual——A. He grinds everything.

Q. That does not go to Bausch & Lomb?—A. No.

Q. It is a very exceptional case?—A. Yes, siree.

Q. It is in the exceptional cases that you have these instructions to Bausch & Lomb?—A. Yes. It amounts to very little.

Q. But you did give it to them?—A. Oh, yes.

Q. Done in writing or orally?—A. Don't you remember when we first arranged with Bausch & Lomb we said "Here are Soft-Lite customers and they want a special order ground for them; don't delay, ship it to them and bill us." That is what we are talking about.

Q. I show you a document which has a number on it already but which we will disregard.

Mr. ISSEKS. I will ask the clerk to mark the original document with the next Government exhibit number for identification.

(Marked "Government's Exhibit 20 for identification.")

Mr. ISSEKS. I now offer it in evidence. It is dated January 29, 1940, addressed to the Royal Optical Company, Newark, New Jersey, and signed Soft-Lite Lens Company, R. G. Landis.

121 The COURT. No objection to this.

(Government's Exhibit 20 for identification marked in evidence.)

Q. The California Optical Company of San Francisco was also a distributor of yours prior to some time in May 1939?—A. Yes, sir.

Q. And there came a time when you told them they no longer could be a distributor?—A. No, sir. When they stopped doing a wholesale business they were no longer a distributor. They sold out their wholesale business to the American Optical Company and operated as a retailer. So they are no longer a wholesale distributor of ours.

Mr. ISSEKS. I now offer in evidence a letter dated May 3, 1939, and ask to have it first marked for identification. It is addressed to Mr. A. R. Fenimore, California Optical Company, San Francisco, California, signed Soft-Lite Lens Company, by Mr. Landis.

(Marked "Government's Exhibit 21" for identification.)

Mr. ISSEKS. I offer it in evidence, your Honor.

The COURT. Is there any objection?

Mr. SEYMOUR. I assume I do not need to answer your Honor's question, because my objection has been noted.

The COURT. And all subject to connection.

Mr. LEHRICH. Yes.

(Government's Exhibit 21 for identification marked in

122 evidence.)

Q. I show you Government's Exhibit 21, and I ask you if it is not a fact that the reason they were taken off as your distributor was because they became affiliated with the American Optical Company?

Mr. LEHRICH. If your Honor please, that letter speaks for itself, and it expressly says that they have sold their wholesale business to the American Optical Company.

The COURT. Yes; but he can ask him to explain it, to affirm or deny.

A. I affirm what the letter says.

Mr. ISSEKS. I now offer in evidence a letter dated May 3, 1939, addressed to the Riggs Optical Company, signed by Soft-Lite Lens Company, apparently by Mr. Immig. I will offer it now for identification and then I will offer it in evidence. Counsel have a copy.

(Marked "Government's Exhibit 22" for identification.)

The COURT. If you are now going to lay the groundwork for its receipt, between the time that you offer it for identification

and then offer it in evidence, you are only encumbering the record, by going through both stages. The purpose of doing the one is to give you an opportunity without confusion to lay the groundwork for its reception. If you are not going to do that,
123 then we only go through the motions twice, and I think we would save time by admitting it.

Mr. ISSEKS. I will try to do that, your Honor. I will be guided accordingly. I offer it in evidence.

(Government's Exhibit 22 for identification marked in evidence.)

Q. Mr. Singer, at one time the firm of Barnett & Ramel of Kansas City was a wholesale distributor of your company, was it not?—A. Yes, sir.

Q. And did you have occasion to see Mr. Barnett or Mr. Ramel in connection with their distribution of your lenses?—A. I did, sir.

Q. Who, and where?—A. Well, at the time I advised them that we were no longer going to do business with them, because it was not to our advantage, I was in Kansas City and Mr. Ramel was home sick. I tried to see him the night before and we were unable to get together, and I talked to him on the telephone. I told his partner Mr. Barnett, probably on the previous trip, that we were not satisfied with the amount of distribution we were getting from them, and we did not like some of their activities which we felt were destructive to the sale of our product.

Q. Don't be so modest. You tell us what the activities were. You told him, too, I assume. What were the activities you
124 did not like?—A. It is not a question of modesty. You just asked me what I told him. We did not go into that.

The COURT. It will save a lot of time if we omit the formalities and go right on with question and answer.

Q. Did you tell him what the activities were that you did not like?—A. Yes. I told him the principal activity we did not like was that whereas he was utilizing our advertising extensively, and as a growing wholesaler using more and more of it, for which he paid nothing, and whereas we were doing substantial missionary work in his territory building up a demand for Soft-Lite lenses, despite that fact his own admission to me on the telephone was, "We sell some of another rose-tint glass under another trade name than yours." I said, "What benefit are we getting out of it? We spend the money advertising. We are doing the missionary work, and you tell us you are doing more business on other lenses selling in competition to ours. We are not getting a break; I do not think it is going to pay us to continue selling you." That was one of the things.

Q. I will give you a chance to tell me the rest in a minute. Did he tell you what that lens was?—A. Velvet Lite.

Q. Did he tell you who was manufacturing that?—A. No.

Q. But you knew who it was?—A. Yes.

Q. Who was it?—A. The Titmus Optical Company.

125 Q. Down in Virginia?—A. Yes, sir.

Q. A well-known manufacturing price cutter?—A. I would not say that.

Q. You would not?—A. No.

Q. What else did you say he was doing that you did not like?—A. I told him we did not like the fact that in addition to apparently featuring another rose-tint glass under the name of "Velvet Lite," and selling much more of that than he was of our product, we were doing all the advertising and the other fellows did practically none, and he was cashing in at our expense; and we heard he was also selling a lens, a rose-tint glass, under the name of Soft-Ray. We felt Soft-Ray and Velvet Lite was a little too crowding on us. At the time we were having a little trade-mark infringement battle with the ostensible owner of Soft-Ray in Chicago.

Q. Who was that?—A. Schulte, a retailer. And the fact that he was using Soft-Ray and Velvet Lite, both lenses that could be confused with ours. His own admission to me was, "Well, we are selling 1,700 pairs of Soft-Ray, 1,200 pairs of Velvet Lite; we give them what they want." I said, "That is perfectly O. K. and agreeable, but with the amount of money that we spend advertising the product, and the missionary work we do calling on your doctors and optometrists and retailers, if all that we get out of that

126 is the leavings it is not worth our while, Joe, to continue to sell you; and it is not worth yours, you are only using us for a good thing, let us say good-by and part good friends."

Q. Then what happened?—A. He then made a comment that was not very nice. I said, "Look, Joe, you are doing what you believe is to your best interests and we are doing what we believe is to our best interests; I do not want to stick you with anything; if you want to return the stock of Soft-Lite you have, send it back and we will pay you for it." When he made the comment, "Well, and we will ship it c. o. d.," I am afraid my comment was a little stern. I said, "You did not buy it that way, we are not buying it back that way. Good luck, and I do hope we don't part bad friends." That was the only way. After all, you can't blame a man for doing what he can in his own best interest, and we are not to be blamed for doing the same thing.

The COURT. When was this?

The WITNESS. I would say five years ago. 1934, I think, your Honor.

Q. I have a document that will help you fix the date.—A. 1934.

Q. You went back and gave instructions to somebody to inform him he was no longer a distributor?—A. Sent him the usual letter.

127 Q. Wait awhile, I have not seen any yet.—A. What is that?

Q. The usual letter—I have not seen any yet. The only one I have seen is what I am going to offer. Was it the usual letter?—A. Form letter.

Q. Whom did you send it to before that?—A. Before 1934?

Q. Yes. I have not seen any up to now.—A. That was our first.

Q. Oh, that starts the custom or the usuality?—A. You send a letter to a customer, and are courteous and tell him you are no longer doing business with him.

Q. But he was not a retail licensee.—A. No, sir.

Q. If anybody called him a retail licensee in a letter he made a mistake?—A. Yes, sir.

Mr. ISSEKS. I now offer a letter dated February 20, 1934——

Mr. LEHRICH. If your Honor please, I want to interrupt because I think in all fairness this ought to be called to your Honor's attention. There is a letter of February 16, 1934, that Mr. Isseks also has, which I furnished him, in which Barnett and Ramel are addressed as wholesale licensees.

The COURT. What do you want to do, make objection?

Mr. LEHRICH. Mr. Isseks made a comment to your Honor or rather to the witness, to the effect that Barnett & Ramel
128 never were a retail licensee.

Mr. ISSEKS. I did not; the witness testified.

Mr. LEHRICH. There is a document he has in his hand in which there is a statement that the use of the word "retail" was in error.

The COURT. I think we will make better progress if you would bring that out on cross. Undoubtedly the witness will explain it if given an opportunity, but if he is not given an opportunity I am sure you can bring it out. I think it would be confusing to have these explanations offered by counsel in the course of the trial. I certainly would not permit it if there were a jury, and unless it is something we can stipulate rather rapidly I do not like to have it even without a jury.

Mr. ISSEKS. To fix the date and show the continuity, your Honor, I offer two pieces of paper, subject to the objection and before your Honor rules, one dated February 16, 1934, addressed to Barnett & Ramel Optical Company, Joplin, Missouri, signed Soft-Lite Lens Company, with the initials in the lefthand corner

"GBH"; and the other one dated February 20, 1934, addressed to the same company and signed by the same person apparently. I offer both of the documents for consecutive numbers.

The COURT. Show them to your adversaries.

129 Mr. ISSEKS. They have copies of both, I believe. Haven't you?

Mr. LEHRICH. Yes.

The COURT. Then it is agreed by all of us that the reference to them as "retail licensee" is an error.

Mr. ISSEKS. I will ask the witness. I think it is.

The WITNESS. Oh, yes; it is an error.

The COURT. It should read "wholesale licensee".

The WITNESS. Wholesale distributor, not wholesale licensee.

The COURT. Any objection to the admission of the letters, then?

Mr. LEHRICH. None.

The COURT. They are received.

(Marked respectively "Government's Exhibits 23 and 24.")

Q. Mr. Singer, you used to have a company called the Arnold Optical Company that was a distributor of yours?—A. Yes, sir.

Q. There came a time when you told them they could no longer be a distributor of yours?—A. Yes, sir.

Q. What was the basis or reason, if you recall, why you told them they no longer could be a distributor?—A. There were several. Instead of his purchases——

Q. Beg pardon?—A. Instead of the purchases increasing, they dwindled. He was slow pay. He was giving us no real sales activity as we expected from a distributor. We felt it

130 did not pay us to keep servicing them as a distributor.

Q. Anything else?—A. Just that he did not buy enough and did not pay for what he bought promptly.

Mr. ISSEKS. I now offer in evidence a letter dated November 12, 1938.

Q. Did you ever have any correspondence with the Arnold Optical Company as to why you took them off any list?—A. I presume when we told them we were no longer going to service them we told them it was not to our best interests to service them, that is all.

Mr. ISSEKS. I am sorry to say we asked your counsel to produce the correspondence, and I do not think we have any, other than a telegram. My associate tells me we have, and if I have time I would like to show them to you.

Q. What about the Dempsey Optical Company in Toledo, Ohio?—A. The usual.

Q. Beg pardon?—A. The usual. They not only did not buy much and did not put much effort behind the distribution of our product, but when in January 1938, I think it was, we wrote them

a letter, "We have to ask you to pay up what you owe, five consecutive months. Won't you please start paying promptly. You buy little enough. Start paying promptly," we again had to ask them for payment, and again we got fed up some time about
131 the third quarter of 1938 and we sent them a wire, "Either pay up or you go c. o. d." We got no satisfaction. In addition we saw their activity was catering more to second- and third-class type of customers and buyers rather than to quality. We said, Well, they are just not in a position to give us any real distribution, they are not buying, they are not paying, we bid them good-by.

Q. You had a representative called George W. Ramaker at that time?—A. Yes, sir.

Q. In any way related to Ben Ramaker, a defendant in this case?—A. Yes, sir.

Q. How?—A. He is his brother.

Q. Mr. Ben Ramaker is general sales manager of Bausch & Lomb?—A. Yes.

Q. This Mr. George Ramaker was one of your salesmen?—A. Yes.

Q. He made reports on the Dempsey Optical Company to you, did he not?—A. To the company.

Q. I mean to the Soft-Lite Company.—A. Yes, sir.

Q. Were the reports in writing?—A. I presume so.

Mr. Isseks. May we have copies in the courtroom? I would like to know, your Honor, because there is a reference to them in the document I am about to offer in evidence, and I would like to offer these in normal sequence. If they have them. I would like to offer them at this time.

132 Mr. Lehrich. We do not have them.

Q. Do you have a recollection they were written documents?—A. No.

Q. He normally wrote written reports, didn't he?—A. No; I tell you, he would have nothing to do with removing a wholesaler. His job is to sell lenses. I met Dempsey a number of times at the wholesalers' conventions. I said, "Phil, you are not buying and you are not paying; it does not pay us to distribute to you, Phil. What about a break?" He says, "We have tough conditions, and we are going more and more after volume business." I said, "That is all right, but we are not getting anything out of it worth while; you are issuing a new price list with second- and third-class lenses and that is not a good quality for wholesalers." He said, "We will have to do it with the type of people we deal with." I said, "We are not getting the business out of you, so we are through; and you are not paying." The association meeting I think was in Detroit, and they meet twice a year, April and November. I think

two or three months after that we sent them a wire again, "You are not paying, it is going to be c. o. d.," and we dropped that.

Q. Isn't it a fact that Mr. Ramaker reported that Dempsey had a price list out that included other types of tinted lenses, competitors of yours?—A. Every wholesaler has such a price list.

133 Q. Isn't it a fact that Mr. Ramaker—I ask you to answer my question—reported to your company that Dempsey had a price list out to retailers that showed not only Soft-Lite lenses but other tinted lenses?—A. I do not recall such a report.

Q. You do remember Mr. Ramaker made a report?—A. I do not remember that.

Mr. Isseks. Your Honor, at this time I offer a letter dated November 12, 1938, addressed to the Dempsey Optical Company, Toledo, Ohio, signed Soft-Lite Lens Company, apparently signed by Mr. Landis.

The Court. No objection?

Mr. Lehrich. No.

(Marked "Government's Exhibit 25.")

Q. Mr. Singer, I direct your attention to the first full paragraph of this letter, which states "We regret that reports received from our representative Mr. George W. Ramaker make it necessary for us to discontinue the distribution of Soft-Line lenses through your company after November 30th of this year." I ask you whether those reports were in writing, if you know?—A. I do not know.

Q. Did Mr. Ramaker normally make reports in writing while he was on the road?—A. He would on retailers. He would on retailers.

Q. Did Mr. Ramaker cover Michigan territory at that
134 time, in 1938?—A. They are in Toledo, Ohio, not in Michigan, you know.

Q. I know, but I have a reason for asking the question.—A. In 1938 either he or another man did.

Q. Did Mr. Ramaker cover Toledo, Ohio?—A. I do not recall.

Mr. Isseks. I call upon counsel for the production of the reports if they are in the files of the Soft-Lite Lens Company.

Mr. Lehrich. As I said before, we have no such reports. There is nothing in the letter which says there are reports.

The Court. Your statement is that you have no such reports, and that is sufficient. You do not need to explain it; I will take your word for it.

Mr. Isseks. I do not quarrel with counsel.

Mr. Lehrich. I made the statement before, but apparently it was not enough for Mr. Isseks.

The COURT. Yes; but he wants to have the record show that you have not got it.

Q. My associate tells me, Mr. Singer, and perhaps it will refresh your recollection, that he was advised in the last week that Mr. Ramaker covers the middle west territory right now. Would that refresh your recollection whether he covered it in 1938?—A. I can explain, if you would like.

135 The COURT. State whether it refreshes your recollection.

The WITNESS. No; it does not.

The COURT. Very well, that stops that.

Mr. ISSEKS. I now offer in evidence as the next Government's exhibit, 26, a letter dated November 28, 1938, addressed to the Dempsey Optical Company, signed by Soft-Lite Lens Company, A. F. I.

Q. A. F. I. is Mr. Immig, is it not?—A. Yes, sir.

(Marked "Government's Exhibit 26.")

Q. Mr. Singer, did your company ever have as one of its distributors the Minnesota Optical Company?—A. We did not.

Q. The Nebraska Optical Company?—A. We did.

Q. And when was that relationship terminated?—A. In 1937.

Q. What were the circumstances under which that relationship was terminated?—A. Well, they bought very little.

Q. Any other reason? I beg your pardon.—A. I am refreshing my memory.

Q. You are refreshing your memory from what, sir?—A. From notes that I brought here.

Q. May I see them, please?—A. Yes. This is about Nebraska—dates and statistics [handing to counsel].

Q. You were using this same memorandum in connection with the other distributors whose relationship you terminated?—

136 Where I needed it.

Q. Where you needed it?—A. Yes. The Nebraska Optical Company I never contacted, Mr. Isseks. I did not know the account. It was one of the wholesalers that started out as a Class A wholesaler.

Q. Who prepared this for you?—A. I did myself, or my girl.

Mr. ISSEKS. I offer this in evidence, your Honor, the whole thing with the notes clipped or attached to it.

Mr. LEHRICH. I object on the ground that the witness testified he was using the memorandum solely to refresh his recollection. There is nothing in there contrary to what he has testified.

The COURT. It might be admissible on your motion in the ordinary course, though it would not be admissible on the motion of Mr. Isseks. However, I think this witness is a witness hostile to the Government's claim throughout. I will receive it.

Mr. ISSEKS. I will clip that on and offer it.

(Marked "Government's Exhibit 27.")

The COURT. I assume the witness wants to continue using it.

The WITNESS. I would like to.

Mr. ISSEKS. I have no objection.

137 The COURT. You can call my attention to the appropriate parts at any time.

Mr. ISSEKS. We may withdraw it overnight and have it copied, may we not? I have not seen it before. We have not a copy.

The COURT. Without objection you may do that.

Mr. ISSEKS. I assume they want a copy, too, for the same reason we want it.

Q. Were there any other wholesale distributors of yours that you were doing business with who were taken off your wholesalers list, if I may use that expression, at any time prior to the present time, other than those you have mentioned?—A. Those you asked about.

Q. Anybody else?—A. Yes; I have here the Cleveland Optical Company. They were on a couple of months and apparently changed their mind. I think they placed an order in September and cancelled in November. Apparently they were not in a position to finance it.

Q. Anybody else, sir?—A. R. Mohr & Sons. Taken off at the same time, and for a similar reason, as E. W. Reynolds.

Q. Anybody else, sir?—A. Ness Optical Company. Before they could accept the shipment we understand they went bankrupt. It all happened within 60 days.

Q. Anyone else, sir?—A. No. You had mentioned that California company.

(Short recess.)

138 Q. Mr. Singer, you know a gentleman called G. P. Moody, of Bausch & Lomb?—A. Yes, sir.

Q. And what is his position there?—A. He has passed away some time ago.

Q. What was his position?—A. He was in charge of the frame sales department.

Q. And you had certain conversations with him, did you not, in 1939, with regard to the exchange of distributors lists?—A. Very likely.

Mr. ISSEKS. At this time, your Honor, I offer certain correspondence relating to the exchange of lists. First, a letter dated June 26, 1939, addressed to the witness by Mr. Moody.

The COURT. Take them one at a time.

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 28.")

Mr. ISSEKS. I offer the reply dated June 27, 1939, from the witness to Mr. Moody. In each case we are showing a copy to counsel for the defendants.

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 29.")

Mr. ISSEKS. Then I offer the response to the last exhibit from Mr. Moody to Mr. Singer, dated June 28, 1939.

The COURT. Received without objection.

(Marked "Government's Exhibit 30.")

139 Mr. ISSEKS. I offer letter dated July 10, 1939, addressed to Soft-Lite Lens Company, attention Mr. Landis, signed Bausch & Lomb Optical Company, signed by Mr. Moody, relating to the same subject matter—exchange of lists.

(Marked "Government's Exhibit 31.")

Mr. ISSEKS. I next offer the letter dated July 11, 1939, to Mr. Moody, signed Soft-Lite Lens Company.

(Marked "Government's Exhibit 32.")

The COURT. Am I correct, Mr. Isseks, that these are Bausch & Lomb lists relating to Bausch & Lomb itself and not necessarily limited to Soft-Lite Lenses?

Mr. ISSEKS. I understand it is all their distributors.

Q. That is true, is it not, when you were exchanging these lists in 1939? You have not looked at these documents, have you?—A. No; I have not.

Q. I will show them to you. I was trying to save time. I show you Government's Exhibit 28 in which Mr. Moody asks you about your wholesalers' lists, and then I show you Government's Exhibit 29 in which you ask him about their wholesalers' lists. You were talking about their wholesalers' lists of all people to whom they sold products at wholesale?—A. Opthalmic products.

Q. And not only your Soft-Lite?—A. They did not sell

140 the Soft-Lite. We asked for their list of Bausch & Lomb wholesalers selling frames and they asked us for our list of Soft-Lite wholesalers.

Q. What you were doing was comparing your lists.—A. To see if they had some people they were selling to that we could interest in selling our products, and I presume that they were doing likewise.

Q. Mr. Singer, you had this morning in front of you a schedule showing the volume of business done by Bausch & Lomb affiliates from year to year beginning with 1922. Do you still have that with you?—A. I think I have. Is this the copy?

Q. No; I do not mean the volume of business, but the question came up how much the Bausch & Lomb affiliates did in a year of business?—A. Yes, sir.

Q. And you testified this morning that up to the year 1924—you testified to up to 1924. In 1925 how much was done by Riggs?—A. 15 per cent.

Q. And how much by White-Haines?—A. 16½ per cent.

Mr. SEYMOUR. If your Honor please, I made objection this morning to the earlier years, and my objection continues to the later years, but perhaps we ought to reserve argument on this affiliated question generally until some longer line of evidence is offered.

141 The COURT. Assuming that he did not identify the company as an affiliate, there could be no objection to his asking how much of such business was done with the Riggs Company or with the White-Haines Company, and therefore the fact that it happens to be an affiliated company cannot possibly exclude that question, and I therefore will have to overrule your objection and admit the evidence.

Mr. SEYMOUR. Exception.

Q. Now this schedule here shows the business done from year to year by your company with the various companies referred to in this case as the affiliates.—A. Yes, sir.

Mr. ISSEKS. I would like to offer this schedule in evidence, your Honor, because I think it will be helpful.

The COURT. Who prepared the schedule?

Mr. ISSEKS. I will ask the witness that.

The WITNESS. I was just handed that by the attorneys but I presume our office prepared it.

The COURT. It was prepared in your organization.

The WITNESS. Yes, sir.

The COURT. And you accept it as a true statement?

The WITNESS. Yes, sir.

Mr. ISSEKS. I am willing to offer it subject to correction.

142 The WITNESS. No; I presume it is a true statement. It was taken off our books.

(Marked "Government's Exhibit 33.")

Q. Approximately how much of your distribution is done today through these companies listed on Exhibit 33?—A. I would say about two-thirds; 60 to 68 percent. I can tell that by adding that up. It is on there.

Q. Whatever the total comes to on the bottom?—A. Yes.

Q. 1940?—A. Yes, sir.

Q. 1941 approximately the same?—A. Yes, sir.

The COURT. About two-thirds?

The WITNESS. 66 to 67 percent. Something like that.

Q. Now you testified this morning that some time in 1924 or 1925 you gave part of your stock interest*m* or rather part of

your stock interest was turned over, the beneficial interest thereto, to two gentleman named Wahlgren and Hubbell?—A. Yes, sir.

Q. Did those two gentlemen become directors of the Optical Service Corporation?—A. I do not think so.

Q. Were they appointed a consulting executive committee?—A. I have used from time to time very often terms and terminology, when it was a one-man business—every girl would use her first and last name so it sounded big, but I do not know what title I gave to good customers. We had no directors except in name—I think my brother-in-law, Dick Coleman,
143 and my father and I were the directors, and I think I / directed it.

Q. I show you the minutes of the Optical Service Corporation for February 10, 1925. That bares your signature, does it not, as secretary?—A. Yes, sir.

Q. And there is a recital and then a resolution and I ask you whether that sets forth the—well, they are the correct minutes, aren't they?—A. Yes, sir.

Mr. Isseks. I offer a recital and a resolution here, your Honor, and I do not want to read it until counsel have the opportunity to object.

The Court. Which minute are you offering? Let us identify the date.

Mr. Isseks. It is February 10, 1925, and there is a recital and a resolution.

The Court. Is it a minute of the meeting of the board of directors?

Mr. Isseks. This is the Optical Service Corporation. I would like to offer it in evidence by reading the recital and resolution and not offer the book.

The Court. Perhaps you had better just read that portion into the minutes instead of marking the book.

Mr. Isseks. That is what I had in mind.

The Court. There is no objection to that course.

Mr. Seymour. No objection to that course but I object to
144 it as against Bausch & Lomb as it deals with two individuals, while they were later, or the companies with which they are connected, became later, affiliated with Bausch & Lomb.

The Court. They were not at that time and I have reserved in my mind your general objection.

Mr. Isseks (reading). "Whereas, the Board of Directors reposes full faith and confidence in the ability and integrity of Daniel D. Hubbell, of Columbus, Ohio, and Roy M. Wahlgren, of Omaha, Nebraska,

"Resolved, that said Daniel D. Hubbell and Roy M. Wahlgren, be, and they hereby are constituted a consulting executive committee of this company, to perform the duties of the said committee as above enumerated for the fiscal years, beginning March 1st, 1925, and thereafter in the discretion of the Board of Directors."

Q. Did these gentlemen, Mr. Singer, continue as a consulting executive committee of Optical Service Corporation for a number of years?—A. Very frankly, Mr. Isseks, it meant so little to me I did not know it ever happened. I thought it was just chatter I had given them and we put it in our books and I do not know why now.

Q. But did they continue to have the stock interest?—A. That had nothing to do with the stock.

Q. I am asking the question.—A. No; that had nothing to do. Their interest was held subject to their paying
145 for their interest. That was why it was not in their names.

Q. But Mr. Hubbell did continue to have a stock interest?—A. Yes. He had his interest. His was finally paid up. I don't think Mr. Wahlgren ever did.

Q. And did these gentlemen continue to have their stock interest after their respective companies became affiliated with Bausch & Lomb?—A. I presume they did. Not in that proportion.

Q. But they had stock?—A. They had stock; yes, sir. There are over two hundred optical stockholders, Mr. Isseks, in our company.

Q. Did the gentlemen have any stock in Soft-Lite Lens Company when that company took over Optical Service Corporation?—A. The Optical Service stock was exchanged for Soft-Lite stock.

Q. Did Messrs. Wahlgren and Hubbell obtain stock interest in the new company?—A. Mr. Hubbell did, but I do not think Mr. Wahlgren did.

Q. And Mr. Hubbell continued, I think, to be an executive of White-Haines Optical Company?—A. He is now the president.

Mr. ISSEKS. I offer in evidence letter dated January 22, 1940, addressed to the witness, signed "Dan" on the stationery of the White-Haines Optical Company, and I do not think there is
146 any question that the writer is Mr. Hubbell.

Q. Is that so, Mr. Singer?—A. No; that is Dan Hubbell.

Mr. SEYMOUR. I would like to understand the materiality of this document. If it leads into the question of admissibility of evidence affecting the affiliates I would be glad to argue that now. It does not seem to me to be material to, or connected with, what he has been examining about.

The COURT. What is the relevancy of this exhibit.

Mr. ISSEKS. Your Honor, it is relevant in connection with two phases of this case. As your Honor has pointed out, first of all, this White-Haines Company is a wholesaler. It is our theory that this licensing system operates to restrain trade for the benefit of the wholesalers, as the cases indicate, and to that extent it has a bearing on the fact that they communicate with each other with regard to the A prices and——

The COURT. As I understand this letter, and correct me if I am wrong, it was as a result of the Robinson-Patman situation, when Soft-Lite abandoned this Class A classification, and as I read it, the White-Haines Optical Company is complaining of that, or at least wants to get straight on the situation because where
147 they might have had a customer in Blue Grass Optical and now there is no distinction in price between distributors and Class A wholesalers, there is nothing they can do which would be profitable to them with respect to Blue Grass.

Mr. LEHRICH. That is correct, and the answer to that bears out precisely that situation.

The COURT. And they want to know what it is all about.

Mr. ISSEKS. And I offer it as part of the course of conduct. There is an earlier letter which I did not put in because of a statement put in by counsel that they ceased the practice due to the Robinson-Patman Act.

The COURT. In so far as it describes the general system of distribution maintained by the defendants, and throws some light on it, I will receive it, and overrule any objection you may have on this particular aspect of it, but reserve your objection with respect to its effect upon Bausch & Lomb.

Mr. SEYMOUR. Yes.

(Marked "Government's Exhibit 34.")

Mr. ISSEKS. I offer the reply, your Honor—both copies. It is dated January 24, 1940, addressed to Mr. Hubbell and signed by Mr. Landis.

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 35.")

148 Q. Now, Mr. Singer, when a new distributor came into your group he was sent a letter of instructions, was he not?—A. He was sent a welcoming letter.

Q. But the letter told him what to do, didn't it?—A. No; I think we told him——

The COURT. If you have a letter, let the letter speak for itself.

Mr. ISSEKS. I now offer in evidence as the next Government's Exhibit, a document which is headed, "Welcoming letter to new distributors," signed by Soft-Lite Lens Company, and apparently signed by Mr. Immig.

(Marked "Government's Exhibit 36.")

Q. Now, Mr. Singer, that is the welcoming letter, Government's Exhibit 36, to which you made reference.—A. Yes, sir.

Q. In here is a statement. "In selling Soft-Lites to the retail trade please be governed by the information found on page 17 of the Soft-Lite stock license price list. As a Soft-Lite distributor you have the privilege of opening new Soft-Lite stock licensee and prescription licensee accounts.. The procedure is outlined on pages 17–20 of the Soft-Lite stock license price list."—A. Yes, sir.

Q. Now I show you the price-list of Soft-Lite licensees for January 2, 1940, and direct your attention to pages 17–20 and ask
149 you whether these instructions have been applicable for a number of years with regard to the welcoming letter?

Mr. ISSEKS. I would like to show your Honor a copy [handing to Court].

A. I know it has been in effect since the time we instituted and announced that Soft-Lite stock license price-list distribution policy.

Q. In 1933?—A. Oh, no.

Q. Before that?—A. Oh, no; I don't think we got out a data book until a couple of years ago; this is only a couple years old.

Q. Only two years old?—A. That is right; only two or three years old.

Q. But these pages 17 and 20 are the ones referred to in the welcoming letter?—A. That is what we mean in our stock price list.

Mr. ISSEKS. I offer the price list to stock licensees for January 2, 1940, consisting of twenty pages.

The COURT. I take it you will call my attention to that part which is material and not ask me to deal with the whole thing.

Mr. ISSEKS. No; I am going to, because the first sixteen pages deal with prices, and I am going to take up pages 17 to 20 of the text.

(Marked "Government's Exhibit 37.")

150 Q. I direct your attention to page 17 where it is stated "With the exception of Orthogon licensees and Panoptik licensees (who have certain privileges indicated below) Soft-Lite lenses are sold only to Soft-Lite licensees." That was the policy of your company for the last three years?—A. When was this first issued? When was that issued?

Q. This is dated August 26, 1940. The one I offered is January 2, 1940.—A. Yes; the last two or three years.

Q. And that has been incorporated in all the instructions to distributors?—A. Yes, sir. Well, the instructions to stock licensees. This goes to the stock dealers or stock licensees and a copy goes to the wholesaler and that is the declaration of our policy on stock sales.

By the COURT:

Q. Is this the same booklet, Mr. Singer, that goes to general distributors, to your top class of distributors?—A. We have only one class of wholesalers.

Q. And that goes——A. It always went to all wholesalers, whether Class A or distributors.

By Mr ISSEKS:

Q. Now, reference is made to Orthogon licensees. Who were they?—A. They are wholesalers or retailers selected by the
151 Bausch & Lomb Optical Company to distribute their products—the Orthogon lens.

Q. And you include all those among your retail licensees, all their retail licensees?—A. Insofar as Orthogon Soft-Lite Lenses are concerned only.

Q. Now there is a reference here to Panoptik licensees. Who were they?—A. And they are the wholesalers or retailers licensed by the Panoptik to distribute their lenses and lens blanks.

Q. Who is the Panoptik Company?—A. A company with offices in Radio City.

Q. You were a director once of Panoptik Company, were you not?

Mr. SEYMOUR. If your Honor please, I have not objected on these two subjects because I thought some elucidation might be helpful, but if counsel is going to inquire to any length on the subject I will object, because the Panoptik situation has absolutely nothing to do with this case.

The COURT. If he does, I will sustain your objection.

Mr. ISSEKS. All I am trying to find out, and maybe counsel will help me out, is that the Panoptik Company is controlled by Bausch & Lomb.

THE COURT. Is that a fact or isn't it?

152 Mr. SEYMOUR. The Bausch Lomb at the present time owns, I think, all of the stock of the Panoptik Company.

Mr. ISSEKS. Then I will withdraw my request. I request a stipulation that they own all the stock.

The COURT. He so stated. I will take that statement as part of the record. He said at the present time, however. If time is important to your case——

Mr. ISSEKS. I am going to ask the witness whether it was so in 1940.

The WITNESS. I would not know about the Panoptik set-up.

The COURT. Why don't you ask Mr. Seymour.

Mr. ISSEKS. I will ask Mr. Seymour whether they owned all the stock in 1940 at the time the complaint was filed.

Mr. SEYMOUR. I am told that was also the fact.

Q. Were you ever a director of Panoptik Corporation?—A. I am not sure; I am not sure.

Mr. LEHRICH. For the record, I might say, Mr. Singer was at one time connected with the Panoptik Company; whether he was an officer or stockholder or director, it was at a time prior to any time Bausch & Lomb had any interest in it.

The WITNESS. It was not the Panoptik Company. It was the Perfected Bifocal Company.

152–A Q. According to the second sentence, the Panoptik licensees automatically became licensees of Soft-Lite, did they not?—A. No. They had the privilege, Mr. Isseks, of getting Panoptik in Soft-Lite under their Panoptik privileges. But they did not have anything to do with other Soft Lite lenses.

153 Q. The third paragraph of the page which you have in front of you reads:

"Orthogon Licensees and Panoptik Licensees, even if they are not Soft-Lite licensees, are privileged to purchase Orthogon Soft-Lite lenses or Panoptik Soft-Lite Bifocals respectively. Similarly, Soft-Lite stock licensees, even if they are not Orthogon licensees, are privileged to purchase Orthogon Soft-Lite lenses on a stock basis. However, Soft-Lite licensees who are not Panoptik licensees cannot buy Panoptik Soft-Lite Bifocals on any basis."

Before you adopted that policy did you take the matter up with anybody at Bausch & Lomb?—A. No. That was the accepted policy at the time. That is how we had been selling. Mr. Isseks, this is a complete résumé of the policy as it stood at that time. It was not a new policy or new idea.

Q. When did the policy first start?—A. Which part of it?

Q. The Panoptik and Orthogon.—A. When the Panoptik announced its policy it was theirs, not ours. They had a patent. They owned it.

Q. Did you take up with them the statement by you in your Soft-Lite license sales plan on page 17 of your price list, the

154 question as to whether or not you would sell through your wholesalers to licensed retailers under the Orthogon or Panoptik plans Soft-Lite lenses?

Mr. SEYMOUR. It seems to me this is far afield from the allegations in this case, if your Honor please, and I object to any further inquiry along the lines of the Panoptik Company.

The COURT. So far I am trying to follow it, and I think what counsel is doing is to try to get the witness to explain a little bit more fully the third paragraph of this document which is in evidence.

Mr. ISSEKS. That is all I want to do.

The COURT. I will not let him go into a general exploration of Panoptik or Orthogon, but apparently there is some kind of mu-

tual relationship here, the exact boundaries of which I have not yet determined in my own mind, but apparently Soft-Lite licensees acquired some privileges in dealing in Orthogon, but not in Panoptik, and Panoptik licensees got some kind of privilege in dealing in a limited kind of Soft-Lite—and Orthogon licensees got a limited privilege of dealing in Soft-Lite. I think there is sufficient there to justify counsel's inquiry as to just how that came about.

Mr. SEYMOUR. I do not object to the elucidation. What I object to is the general inquiry, and if your Honor does not feel that this question involves that, all right.

155 The COURT. I don't think we have reached that stage yet, but when you think we have you state your objection.

Mr. ISSERS. I do not intend to get to that stage.

Q. All I want to know is whether your company, or you personally, talked to anybody at Bausch & Lomb before coming to the statement of policy set forth in this paragraph, which, as I understand it, results in Orthogon and Panoptik licensees getting certain privileges under a Soft-Lite plan? Did you talk to anybody in Bausch & Lomb about it?—A. You have me a little confused. If I might explain. Orthogon came out some years before Panoptik. The Orthogon Soft-Lite paragraph here is not only our idea, but we have had discussions with some of the Bausch & Lomb Orthogon wholesaler distributors who had not read that and did not realize that was the policy. Bausch & Lomb themselves asked us is that our policy. We set the policy and published it. Now so far as Panoptik is concerned, on the bifocal product they made, they specified their terms on Panoptik lenses. We supplied Panoptik in the blank form only to those licensed by the Panoptik Company, and on the terms on which they buy the white, but the fact that a Panoptik dealer may buy a Panoptik Soft-Lite lens gives him no right to get other Soft-Lite forms.

156 Q. I understand that; you said that twice. You have answered my question partly.

By the COURT:

Q. When you conferred a license on someone to become a Soft-Lite stock licensee, you told him that he thereby acquired the right to purchase Orthogon Soft-Lite lenses; is that right?—A. Yes.

Q. You must have been able to tell him that with the consent of the Orthogon people.—A. We did that on our own.

Q. How could you do that on your own, without getting the consent of the Orthogon people? Suppose they objected?—A. I tell you why. We contend we are selling Soft-Lite in all forms, single vision, bifocal, uncorrected and corrected——

Q. But you could not sell Orthogon.—A. Any Soft-Lite. We stocked the Orthogon Soft-Lite, not Bausch & Lomb, your Honor.

It is our stock. It is just one of the series of lenses we carry in stock.

Q. Isn't it a patented lens?—A. I do not know whether it is patented or trade-marked. I think it is patented.

Mr. LEHRICH. It is patented.

Q. You could not manufacture it, or sell it for that matter, unless you were permitted to do so by the patent holder or licensee.—A. Yes; they sell us Soft-Lite lenses on our order. We would order Orthogon, we would order certified series with
157 the six base curves. The Orthogon is a corrected lens. We were not permitted to supply Orthogon semi-finished or rough, to anybody that did not have a grinding license, because it involves curves under their chart. We supplied Orthogon Soft-Lite uncut lenses which anybody could handle, to any Soft-Lite customer, because we sold Soft-Lite in two series, corrected and uncorrected. Now if an Orthogon dealer wanted to buy Orthogon white lenses from our wholesaler selling Soft-Lites, and ordered Orthogon Soft-Lites because he had an Orthogon license, we felt he should have the privilege of getting Orthogon IN Soft-Lite or Orthogon IN white. But we had no dealings with him other than Orthogon, and we would not supply him with the regular curve Soft-Lite on a stock basis. We had no dealings with him. When the Panoptik plan came out they said, "These are our customers, you sell them this, it is our policy." Whereas a Panoptik licensee may buy Panoptik Soft-Lite, it gives him no other privilege in any other, unless he is qualified, that is all.

The COURT. I am sorry to have taken the witness away from you, but I wanted to get that clear in my mind.

Mr. ISSEKS. And it is helpful to me.

By Mr. ISSEKS:

Q. You said the Bausch & Lomb people asked you whether or not certain of their licensees, as I understood your answer
158 before, were entitled to Soft-Lite privileges, and you told them yes.—A. I don't get you.

Q. I think in one of your answers you said the wholesalers wanted to know whether Orthogon franchise holders could purchase Soft-Lite, and you said Bausch & Lomb wanted to know, too, as I understood your answer.—A. No.

Q. You do not remember it?—A. No; I did not say that. I did not make myself clear. I said that I noticed here a couple of years ago, I think, that one of the Bausch & Lomb wholesalers, in fact I think it was White-Haines, was surprised to see something in that list, because he did not know that that was so. He asked somebody of Bausch & Lomb, and they did not know, and their answer was, "We do not know, you have to ask Soft-Lite; that is their policy." That has always been the way the thing was done.

Q. Look at page 17. I have one more question. I will go away from that and come back to it at some time tomorrow. Just before the heading "Requirements" the last sentence reads:

"The Soft-Lite Protection Certificate identifies genuine Soft-Lite Lenses to the dispenser and to the patient, and indicates the wholesale source of supply."

That set forth, did it not, the reasons for the certificate?—

A. I must be wrong in this. You said the last line on
159 page 17.

Q. No.

The COURT. Perhaps you are looking at a different book or he is reading one of a different date.

Mr. ISSEKS. They are the same, but he misunderstood me.

A. This talks about an identification plaque.

Q. No; I am sorry. The second sentence.—A. Oh, excuse me.

Q. My question is whether that sentence sets forth the reason for the Soft-Lite protection certificate.—A. The reason for the Soft-Lite Protection certificate was to identify the genuine product so that the consumer was not being given something that was other than genuine. The reason for the introduction of the Protection Certificate was that there was a series of rose-tinted lenses were extensively sold on the market, that were used to be palmed off instead of the genuine, and the certificate was given so that if the retailer wanted to identify the genuine he could, and it was good advertising for him, he could put his name on it; and the patient would know he was to come back to him, because he had the prescription number on it. It was excellent advertising.

Q. Also page 17 says, "indicates the wholesale source of supply."

—A. I do not know what that was intended to mean.

160 The COURT. It would identify the wholesale source of supply.

The WITNESS. Well, the protection certificates are gauged in our office by numbers, and each wholesaler has a number, such as 7, 18 or 22.

The COURT. Suppose you look at Exhibit 18. How would you tell which wholesaler sold a particular number of lenses that accompanied this certificate?

The WITNESS. I would not know. None of us would know. Only the stock clerk would know that.

The COURT. I mean to say can you trace it in your office?

The WITNESS. Yes, I think we can. We know XYZ Optical Company gets certificates number—I do not know whether they use the second, third or the first number.

The COURT. So by looking at the red number on the face of the certificate you could arrive at the name of the wholesaler through whom these lenses were passed to the market?

The WITNESS. Yes, sir.

Q. And you have a price list for August 26, 1940, which has the same statement in it.—A. Well, I don't remember that. If you say so I presume it is so.

Q. Look at it right there.—A. You said a price list.

Q. This is a price list, is it not?—A. You just referred
161 to that.

Q. Yes.—A. It is in here.

Q. The last one, too. Is that the last one?—A. This is August 26, 1940. I think that is the last one.

Q. You give your salesmen, do you not, a book called "Confidential Information"?—A. A data book.

Q. A data book, and it is called confidential?—A. Yes.

Q. This is one of your "Confidential Information" books? This is the one of April 1, 1936.—A. Yes.

Mr. Isseks. We did not get this from the defendants, your Honor, although I am sure that they would give it to us if we asked them.

The Witness. You could have.

Mr. Isseks. I am sure we would.

The Witness. We would give you anything you wanted if you asked for it.

Mr. Isseks. I am sure you would. Will you let me have one for 1940?

The Witness. We will be glad to.

Mr. Isseks. I would like to offer this one, your Honor, subject to its genuineness.

Mr. Lehrich. That book is repetitions, and it certainly burdens the record, unless counsel would point out what part he wants. It contains the same kind of information.

162 The Court. Do you want to protect its confidential character? Is that what is disturbing you? If you do not want to make it public we can arrange that.

Mr. Lehrich. No, your Honor, that is not the point I make at all, but it is repetitious of a lot of material that has already gone in.

The Court. I will not pass now on whether a big book of that kind is repetitious of a lot of evidence that has gone in. Under the circumstances I will overrule your objection. If you want to take on the job of going through and marking off each sentence that is repetitious, that is a different proposition. But I won't undertake to do it.

Mr. Seymour. Of course it is taken subject to my general objection.

The Court. Oh, yes. If for any reason you want to protect its confidential character, I think the Court should give you such protection.

Mr. Lehrich. No, that was not my point at all.

The WITNESS. There is nothing confidential in it, your Honor.
Mr. ISSEKS. I would like to have this marked before we adjourn.
(Marked "Government's Exhibit 38.")
Adjourned to Wednesday, September 17, 1941, at 10:30 a. m.).

163 UNITED STATES OF AMERICA
vs.
BAUSCH & LOMB OPTICAL CO., ETC.

NEW YORK, *September 17, 1941*
10.30 o'clock, a. m.

Trial Resumed.
NATHANIEL SINGER resumed the stand.

Direct Examination resumed by Mr. ISSEKS:

Mr. ISSEKS. Your Honor, at this time I would like to call attention to two portions, very small portions, of Government's Exhibit 38.

The COURT. I have not a copy.

Mr. ISSEKS. You have not a copy. I think if your Honor wishes one we can get one later on from the defendants. On the second page of this salesmen's book there is a sentence, next to the last paragraph, which reads as follows:

"(b) Complete Soft-Lite Lens service is available everywhere through selected wholesalers whose standards of quality and service are recognized as of the highest."

On page 33, the second paragraph reads:

164 "Soft-Lite Lenses in any form, except in the Orthogon series or Panoptik Soft-Lite Bifocals, are sold to Soft-Lite licensees only. Orthogon franchise dealers and Panoptik licensees who are not Soft-Lite licensees are privileged to purchase Orthogon Soft-Lite lenses or Panoptik Soft-Lite Bifocals respectively. This controlled distribution plan coupled with the display of the identification plaque by all Soft-Lite licensees, and the use of the Soft-Lite Protection Certificate, which both identifies genuine Soft-Lite lenses to the retailer and to the patient and provides a means of indicating the wholesale source of supply, forges a chain of protection so vitally necessary to any profitable product sold in the optical industry."

At this time, your Honor, I would like to offer in evidence a document which I will first have the witness identify. It is a document which is headed "Soft-Lite Lenses—Their Purposes, Advantages and Merits, together with a brief history of the use of light absorptive lenses." It has I believe six pages.

Q. Mr. Singer, was that document (handing to witness) circulated by your company? It has been circulated?—A. Yes, Mr. Isseks.

Q. And how long ago, sir? There is no date on it here. Recent years?—A. Yes, sir; recent years.

165 Q. And still being circulated?—A. I don't know.

Mr. ISSEKS. I would like to have it marked with the next Government's exhibit number, and I have a copy here for your Honor.

The COURT. What is its relevancy?

Mr. ISSEKS. Your Honor, I am interested in this whole protective system, so-called, on page 4, under the heading "Protection".

The COURT. It is cumulative, or does it add anything to what you have already offered?

Mr. ISSEKS. I am afraid it is cumulative.

The COURT. As I understand it, Mr. Isseks, I do not think there is any dispute here, A, that the wholesalers were selected; B, that the stock licensees were permitted to purchase only if they were approved, or selected by the Soft-Lite people either on their original initiative or at the suggestion of one of the wholesale distributors. All that is pretty well accepted, and it would be in this case. If all this is simply cumulative we will let the record show that, and why do you want this original document?

Mr. ISSEKS. Your Honor, we do not need the document if I read the paragraph in. The paragraph is very short.

The COURT. No objection to that?

166 Mr. SEYMOUR. Of course I have an objection to it, on behalf of Bausch & Lomb.

The COURT. I am aware of your objection.

Mr. SEYMOUR. As incompetent, irrelevant, and immaterial.

Mr. ISSEKS. All I am interested in is this one paragraph on page 4, and I am perfectly willing to read it in unless counsel wants the whole document.

The COURT. Very well, read the paragraph that you regard as most pertinent. But let us eliminate cumulative material. These cases are long enough as it is.

Mr. ISSEKS. I know that, your Honor, and I think when the time comes there will be some argument that this case is different from other cases. Putting something extra in I think shows the emphasis placed upon something we think comes right within the Beech-Nut or the other cases we cited in our brief. It is very short, your Honor.

The COURT. Very well, read the paragraph in. That will at least save the reading of the whole document.

Mr. ISSEKS. That is right. It is six lines. There are various headings on page 4. This heading is called "No. 5. Protection." It reads as follows:

"Much of the success of Soft-Lite lenses may be attributed to the unwavering policy of the Soft-Lite Lens Company in restricting the distribution of these lenses to the most reputable
166-A optical channels, both wholesale and retail, thereby maintaining their position as a high class prescription specialty and providing effective protection"—those two words, your Honor are printed in solid caps—"for all interested factors, including the patients."

167 The COURT. As I understand it, the defendant Soft-Lite not only admits that, but claims it.

Mr. ISSEKS. Well, that may be so, your Honor.

The COURT. I just wanted to have the record clear, that there is no issue about this policy.

Mr. LEHRICH. That is correct. It is our national advertising.

The COURT. Whether or not that constitutes a violation of sections 1 or 3 of the Sherman Act is another matter.

Mr. ISSEKS. I have another one in the same category, and it is but a few words, and I would like to read it. It is again only about six lines.

The COURT. Very well.

Mr. ISSEKS. I will have the witness identify it first.

Q. I show you a document entitled. "Glare Strain and Important Problems in Modern Refraction" Soft-Lite Lens Company." Is that a document circulated by your company?—A. Let me look at it.

Q. Certainly.

The COURT. While he is doing that it might be well if these documents you have read from be marked for identification in case they are to be referred to in cross-examination. It might facilitate the reference to them.

168 Mr. ISSEKS. I will be glad to do that. The first one I read from is offered for identification.

(Marked "Government's Exhibit 39 for identification.")

Mr. ISSEKS. And the one I have just shown the witness headed "Glare Strain" can be marked the next number for identification.

(Marked "Government's Exhibit 40 for identification.")

A. Yes, sir.

Q. How long ago was this distributed by your company?—A. It says on there, 1936.

Q. Who was it distributed to, please?—A. To the profession and trade.

Mr. ISSEKS. Your Honor, I would like to read from this document. It is not paged as such but it is the fifth page, the last paragraph on the page.

Mr. SEYMOUR. I want to object on behalf of Bausch & Lomb along the lines heretofore followed, and I assume that this, like all others, is subject to that objection and taken subject to connection as far as Bausch & Lomb is concerned.

The COURT. Just so as to save you trouble, Mr. Seymour, time and energy, and the stenographer effort, supposing we say that everything that goes in with respect to Soft-Lite is taken subject to objection on the part of Bausch & Lomb, and subject to a
169 motion to disregard and strike out as far as the defendant Bausch & Lomb is concerned, and the ruling on that will be reserved until such time as the Government has concluded its case to that I can then determine whether or not the connection has been established and the foundation laid for the charge of conspiracy which would then subject you to the acts and declarations of your colleagues in the conspiracy.

Mr. LEHRICH. And contra, I assume, as to testimony as to Bausch & Lomb?

The COURT. To save time and effort, the same will be true in connection with all oral testimony in connection with Bausch & Lomb. It will be taken subject to objection on the part of defendant Soft-Lite, and in that way we won't have the record reading like a series of objections continuously without apparent disposition of them. I assume that is agreeable to you, Mr. Isseks?

Mr. ISSEKS. No objection whatsoever. I think it will have a lot of time.

The COURT. Of course I should caution counsel if there is some objection of a different category then I will hold you to the usual rule that you must call the Court's attention to it or be deemed to waive it.

Mr. SEYMOUR. Yes, I understand.

Mr. ISSEKS. This paragraph reads as follows: "Con-
170 trolled manufacture exclusively for the Soft-Lite Lens Company by Bausch & Lamb 'from the sand to the finished lens' is a guarantee of uniformly high quality, and the protective sales policy initiated and vigorously maintained by the Soft-Lite Lens Company manifests that all ethical and commercial rights are amply protected."

Q. Now, Mr. Singer, after you make somebody a wholesaler, how does the trade know about it?—A. We send an announcement to the trade journals.

Q. You insert an advertisement or just tell the trade journals?—A. It is trade news. It goes in the trade news columns.

Q. Which is how the retailers find out about it?—A. Yes, sir.

Mr. ISSEKS. Now, your Honor, again I have to offer something that is slightly cumulative, but I will just mark it for identification.

Q. I show you a document entitled a Prescription Price-List of Soft-Lite Bifocal Lenses, February 1935, and ask you whether this is a document that was circulated in the trade as of 1935?—A. Yes, sir.

Mr. ISSEKS. I would like to have this marked for identification Government's Exhibit 41, and I will read just one part of it.

(Marked "Government's Exhibit 41" for identification.)

171 Mr. ISSEKS. On the second full page of this document there is a statement which says "Introduction," and there are four paragraphs, but I am only going to read the last paragraph. It reads:

"Soft-Lite Bifocal Lenses alone are offered in complete lens service and distributed only by licensed wholesale distributors whose standards of quality are consistent with those of Bausch & Lomb and of the Soft-Lite Lens Company."

Q. Now, Mr. Singer, I show you a list which was furnished us by your counsel, and ask you, as of 1940, whether that was your list of Soft-Lite distributors?—A. As of 1940?

Q. The date on there, furnished us, was August 30, 1940.

Mr. LEHRICH. Yes, sir. That is also stipulated.

Mr. ISSEKS. Subject to correction.

Mr. LEHRICH. Yes. I got that from our files.

Mr. ISSEKS. This is prior to the filing of the complaint, your Honor, and that is why I have that one.

(Marked "Government's Exhibit 42.")

Q. Mr. Singer, I think you testified yesterday that Bausch & Lomb manufacture the Soft-Lite lens for you at Rochester, New York, and ship them down to New York City to you?—A. Yes, sir.

The COURT. Are you planning to prove interstate

172 commerce?

Mr. ISSEKS. Yes, sir.

The COURT. Is there any dispute on the part of the defendant Soft-Lite?

Mr. LEHRICH. No dispute.

The COURT. Is there any dispute on the part of Bausch & Lomb?

Mr. SEYMOUR. I think not, if your Honor please, on the general phases of the case. There is one question, which I am not directly concerned with, which I am wondering about, and that is with respect to the Government's charge as to local price maintenance. Bausch & Lomb did not have anything to do with that.

The COURT. I say, but there is no dispute on the issue he now proposes to prove, namely, that Soft-Lite, the defendant, is en-

gaged in interstate commerce and Bausch & Lomb are engaged in interstate commerce.

Mr. ISSEKS. That is right.

The COURT. Just those two propositions.

Mr. SEYMOUR. I think that is so. There might be a facet on that count which does not involve interstate commerce which we are not now dealing with, but I don't want this stipulation to bar a suggested objection at the time it arises.

173 Mr. ISSEKS. I know what counsel has in mind. There are several phases of this case; one, Bausch & Lomb and Soft-Lite; Bausch & Lomb to its distributors, occasionally these prescription-people the witness testified about; Soft-Lite to the wholesalers; than from the wholesalers to the retailers; and then from the retailers to the consumer.

The COURT. He is concerned about the arrangement whereby local retailers are obliged, or it is alleged they are obliged, to maintain a prescribed price list. You are concerned with whether that aspect of it constitutes an infringement of the interstate commerce clause?

Mr. SEYMOUR. Yes.

The COURT. He is not proposing to prove that at this stage, and that will be more a question of law than of fact. Is it agreeable to all counsel that we stipulate both defendants are engaged in interstate commerce?

Mr. LEHRICH. I think so.

Mr. SEYMOUR. Yes.

The COURT. Then we do not have to go into that line of proof.

Mr. ISSEKS. Thank you, your Honor. They will also stipulate, I assume, that they are engaged in commerce in the District of Columbia, both of them?

The COURT. Is that also stipulated, under section 3?

174 Mr. SEYMOUR. Yes.

Mr. ISSEKS. Thank you.

Q. Now I show you Government's Exhibit 37, pages 17 to 20, and ask you whether that sets forth the procedure in 1940 with regard to the manner in which retailers may become licensees of your corporation?—A. This is our Soft-Lite Licensee and Sales Plan.

The COURT. This is in actual operation?

The WITNESS. Yes.

Mr. ISSEKS. Then, your Honor, I would like to direct your Honor's attention to page 17, on the bottom of the page, to the requirements of a stock licensee, and your Honor will note also on page 18 the requirements of a prescription licensee, and you will notice there that they must not indulge in any form of "bait" advertising and the "bait" is quoted.

The COURT. No; it is not in my copy.

Mr. ISSEKS. I am sorry. On the previous page. It says "requirements"——

The COURT. I will go along with you on that. The quotation is on page 17 but not on page 18.

Mr. ISSEKS. I agree. I shifted from one to the other. It was my fault. On page 17 and similarly on page 18 the language is the same; must not indulge in installment advertising in
175 which prices mentioned in any form, and the language in both cases is exactly the same, and "must conduct his business or practice in a reputable and ethical manner."

Q. Now, you have a form application, have you not, to be signed by a stock licensee, at least a prospective stock licensee?—A. Yes, sir.

Q. I show you a document which is dated February 21, 1939, and has attached to it, which is directed to the Soft-Lite wholesale salesmen and branch managers, signed by Mr. Immig, three copies of a proposed application, and I ask you whether that form is the usual form used in connection with the transaction of your business of getting new retail stock licensees?

Mr. LEHRICH. Your Honor, I understand he means that is a form used since February 1939.

Mr. ISSEKS. That is right.

A. Yes.

Q. I would like to ask you whether that form was used prior thereto?—A. Of what type?

Q. A similar application—from 1933 to 1939?—A. There may have been some changes in the form in between, but I do not recall them. I think we used the 1933 form up to the time this is introduced.

Q. Do you have a copy of the 1933 form in the courtroom, if you know?—A. I think the Government was given a
176 copy of it.

Q. My associates tell me that the only form we have since your stock and prescription licensee——A. That is what I am referring to.

Q. That is the only one we have. We were told there was the same one used in 1933. That is what I have been informed.

The COURT. How about that, Mr. Lehrich?

Mr. LEHRICH. I will check on that. I suggest that Mr. Landis be interrogated on this part of the procedure because it is in his department. Mr. Singer has no familiarity with it at all.

The COURT. My suggestion is that we interrogate counsel. I don't think there ought to be any dispute as to which forms were in use by the company at particular times. Cannot you gentlemen get together and agree on this?

Mr. LEHRICH. We have two or three forms of licenses and the various dates are chronologically arranged. He is talking about application forms on which I am not prepared to answer now, but I will be in a few minutes.

Mr. ISSEKS. Then I will go ahead.

Q. Going back to Exhibit 12, that was the form in use in 1927, was it not?—A. Yes.

177 Mr. ISSEKS. Now, your Honor, I wish to point out that in this Government's Exhibit 12, in 1927, the applicant states that he is a recognized, high-grade, ethical optical concern, cognizant of the standards and principles upon which licenses for Soft-Lites are granted, and he hereby subscribes to those principles, and to the fact that they have placed a signed order for an outright purchase of the minimum quantity requirements of Soft-Lite lenses.

Q. I show you the application used in 1928, Government's Exhibit 11, and ask you whether that application was used for some time thereafter until 1933?—A. It was.

Mr. LEHRICH. Mr. Isseks, for the record; that same form was used until 1933 when the new form was used; the one you showed the witness.

Mr. ISSEKS. That is what I understood. Until 1933 he used the one now in his hands.

The COURT. Exhibit 11.

Mr. ISSEKS. Exhibit 11; that is right.

The COURT. In use until 1933.

Mr. ISSEKS. All right. Thank you.

178 Mr. ISSEKS. Now, here the applicant stated——

The COURT. Have you offered in evidence the one that was in use after 1933?

Mr. ISSEKS. I have not yet, your Honor. That is what we had a dispute about.

The COURT. It is not marked, identified, nor in evidence?

Mr. ISSEKS. No; I am going to come to that.

Mr. LEHRICH. Your Honor, may it also appear that No. 11 represents not only the application but the so-called license. That is the only document that passed between the company and the so-called licensee.

Mr. ISSEKS. I take that as a stipulation.

Mr. LEHRICH. There was not an application and a separate license agreement.

Mr. ISSEKS. I take that as a stipulation.

The COURT. Very well, the record will so disclose.

Mr. ISSEKS. In the form used from 1928 to 1933 I call your Honor's attention to the fact that the form shows that the firm

that is applying is recommended by a wholesaler, and then the form goes on to state:

"As a recognized high-grade ethical optical firm, believing in the high professional standards and trade principles upon which Soft-Lite lenses are made and sold and in accordance with
179 which the licensee privilege is granted."

Do I understand counsel to stipulate that the form attached to this letter of February 21, 1939, to wholesalers, was used from 1933 to date for Soft-Lite stock licensees?

Mr. LEHRICH. This was used from 1939 to date.

Mr. ISSEKS. I have one from 1933 to date.

Mr. LEHRICH. That is right.

Mr. ISSEKS. 1933 to 1939. Then we will have it all chronologically.

Mr. LEHRICK. 1934 to 1939. It is the agreement itself, which is the application plus the license. There is no separate application and separate license.

Mr. ISSEKS. Then, may I have a form for that? I have one that is signed.

Mr. LEHRICH. You have some that are unsigned.

Mr. ISSEKS. I have one here that is unsigned; yes. I am told by counsel, and I will now offer in evidence, the agreement itself, from 1934 to 1939, which constituted the application. I have a copy here which I would like to have marked as the next Government's exhibit.

(Marked "Government's Exhibit 43.")

Mr. ISSEKS. I take that as a stipulation, your Honor, and I would now like to refer to the document without interrogating the witness.

180 Mr. LEHRICH. Mr. Isseks, to get the complete chain I think you ought to also now introduce the stock license certificates and the prescription certificates used after 1939.

Mr. ISSEKS. I am going to get them all. I intend to put them all in before I get through, every one.

Mr. LEHRICH. As long as you are getting the complete chain, continue the chain down to the time that we abandoned that form and continued with the new one.

Mr. ISSEKS. If I do not put them all in I wish that counsel would call my attention to it, because I want to get them all before your Honor. This Exhibit 43 constituted the application, and when signed by the Soft-Lite Lens Company, the licensee. I direct your Honor's attention to the second full paragraph.

The COURT. Is it numbered?

Mr. ISSEKS. Numbered 2. No; I will take 1 and 2 your Honor. No. 1:

"Licensor hereby grants licensee a revocable, non-exclusive and nontransferable license to purchase"——

The COURT. I have to read it. It is already in evidence.

Mr. ISSEKS. All right, sir; I direct your Honor's attention
181 to those two paragraphs. I also direct your Honor's attention to the fifth paragraph with regard to termination. Now I understand from counsel that the document which is attached to the February 21, 1939 letter from Soft-Lite Lens Company to the Soft-Lite wholesalers and salesmen, is the application form used since 1933. We received it from counsel.

Mr. LEHRICH. 1939.

Mr. ISSEKS. Excuse me, 1939 to date. We received it from counsel with three application forms, all of which are alike, and I would like to save the record by just having only one marked. I am taking the other two off, and will have this one marked.

(Marked "Government's Exhibit 44.")

Mr. ISSEKS. I would like to direct your Honor's attention to the first sentence of the application. With your Honor's permission I would like to read it:

"The undersigned hereby makes application for a Soft-Lite registered dispensing license under the classification of Stock Licensee, with the rights and privileges granted to licensees thereunder, and agrees in the event a license is granted to the applicant as the result of this application to observe strictly the terms of the license, with which terms the applicant is familiar."

182 The COURT. And I suppose you want me to underscore the words "and agrees"?

Mr. ISSEKS. That is right, sir. And at the botton I wish to call your Honor's attention to the fact that the wholesaler or salesman fills out the bottom portion. There your Honor will notice, at the very end before the signature of the representative recommending the application and the Soft-Lite distributor their business practices. I direct your Honor's attention to——

The COURT. No. 1.

Mr. ISSEKS. And 2 and 3 and 4.

By Mr. ISSEKS:

Q. As I understand it, Mr. Singer, the last Government exhibit, No. 44, this application, has been used since 1939 and has been used up to date?—A. I believe so.

Q. And as a certificate after the licensee has accepted he gets what you call a stock certificate, does he not—or you call it a stock license?—A. This was used at one time.

Q. Isn't it used now?—A. I don't know.

Mr. ISSEKS. I will take this one first, and then we will see if we can get the other one. I would like to have marked as the next

Government exhibit a document which is called "Soft-Lite Lenses Made by the Bausch & Lomb Company exclusively for the Soft-Lite Lens Company. New York, Toronto, London. Registered Dispensing License. Stock."

183 Mr. SEYMOUR. If your Honor pleases, the form was changed, and there is a different form in use at the present time. It seems to me that the earlier forms are immaterial, because the question here is what the present practice is. The historical background with reference to licenses and applications as such I suggest is immaterial.

The COURT. I will overrule you on that, for the reason that it may very well be the earlier practice was laid down as a groundwork for the actual practice today, although it may not have been mentioned in writing. I think it is therefore material. The weight, of course, is subject to investigation. Are you offering that in evidence?

Mr. ISSEKS. Yes, your Honor.

(Marked "Government's Exhibit 45.")

The COURT. Now I should like to know when this was in effect.

Mr. ISSEKS. I am going to ask counsel, because I gather that the witness is not so clear on it, if counsel will stipulate when that was in effect. And I would like to have the new one, the one in use now. We were told that it was new, because my associates went to the trouble of putting "New" on the back of it, but we were misinformed apparently.

Mr. LEHRICH. If you will show it to me.

184 Mr. ISSEKS. It is exactly the same.

Mr. LEHRICH. I told you I would stipulate with you. Since February 1939, your Honor, we have been using the form just shown to your Honor.

The COURT. Exhibit 45.

Mr. LEHRICH. Yes, sir.

The COURT. Give me the date again.

Mr. LEHRICH. Since February 1939.

The COURT. To date.

Mr. LEHRICH. That letter accompanying the application Mr. Isseks handed to you shows it.

Mr. ISSEKS. Government's Exhibit 44.

Mr. LEHRICH. There was an announcement to the trade that hereafter this form would be used, and that followed a ruling by the Federal Trade Commission in a cease and desist order, changing our form from the older form to this form. That is why Mr. Seymour suggested that the older form was of no consequence in this case.

The COURT. I have not seen the older form, unless you mean Exhibit No. 44.

Mr. ISSEKS. No; the one before that, your Honor.

The COURT. I haven't it here.

Mr. ISSEKS. I offered one.

The COURT. I have Exhibit 45, and I am told my Mr. Lehrich that is the one being used from 1939 to date. I have not seen an earlier form.

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Mr. ISSEKS. Exhibit 43, your Honor, as I understand it.

The COURT. It is an application form.

Mr. ISSEKS. But it also constitutes a license.

The COURT. I see.

Mr. ISSEKS. In that the language there of Paragraph 2, your Honor, is substantially different from the language of Paragraph 2 of Government's Exhibit 45, and that difference is the result of what Mr. Lehrich has said was an order of the Federal Trade Commission, which we intend to offer in due time.

Mr. SEYMOUR. I am sorry that I objected under a misapprehension.

Mr. ISSEKS. In other words, the witness was wrong about Exhibit 45, and we take counsel's stipulation to be the fact.

Your Honor, I direct your attention to Paragraphs 1, 2, and 5, and I call your Honor's attention to the agreement in Government's Exhibit 44 by the applicant that he will abide by the terms of the license with which he says he is familiar.

The COURT. Where is it?

Mr. ISSEKS. In Government's Exhibit 44, where the ap-

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plicant agrees. There is no agreement here on Exhibit 45, but you have to take them both together.

The COURT. Very well.

Mr. ISSEKS. The Government's position is that it constitutes a contract on the part of the stock licensee.

Now, I would like to have counsel produce if he has it here an old form of dispensing license—rather a prescription license as distinguished from a stock license, if he has one here.

The COURT. Now, just a minute; I understood a minute ago that Exhibit 43 constituted the combined form of license and application.

Mr. ISSEKS. Your Honor, they have two forms of retail license, stock and prescription. Government's Exhibits 43, 44, and 45 are all stock. Perhaps I ought to ask the witness about the difference.

Mr. LEHRICH. I think that would be a waste of time, to ask the witness those questions. I had a great time in getting it straightened out with the people who do know.

The COURT. In one case they do a limited amount of grinding, and in the other case they do not.

Mr. LEHRICH. Two different types of retailers, and two different types of license.

The COURT. The prescription licensee as I understand it
187 is equipped to do no work except sell a finished product.

Mr. LEHRICH. He is a hand-to-mouth buyer, who buys each day's requirements, stocks no lenses.

Mr. ISSEKS. We will take that, too, as a stipulation, your Honor.

The COURT. Very well.

Mr. ISSEKS. I am trying to get the old form of prescription license. I have the new form in my hand. If I get that I will offer that and then offer the new one. I have an executed copy of the old prescription license, if you want to get an idea what it looks like.

Mr. LEHRICH. I am informed by Mr. Landis that Exhibit No. 43 which was introduced in evidence and is designated "Stock License" was used in precisely the same form for the registered dispensing license. The only variation in language is to the effect that the stock licensee was purchasing a stock of lenses. I have a form in this volume which I will take out and you can offer it in evidence.

Mr. ISSEKS. I would like to offer it in evidence right now. While we are waiting for it, your Honor, I will go ahead and offer two other pieces of paper.

By Mr. ISSEKS:

Q. In 1933 when you made the stock retailers and prescrip-
188 tion retailers licensees under formal documents, you issued notices to the trade, did you not?—A. I think so.

Mr. ISSEKS. I now offer first a form letter dated September 27, 1933, addressed to Soft-Lite licensees, signed Soft-Lite Lens Company, as the next Government exhibit.

(Marked "Government's Exhibit 46.")

Mr. LEHRICH. Your Honor, I have that complete. Apparently the first bulletin went out on May 17, 1933.

Mr. ISSEKS. I wish we had known it. I will offer it.

Mr. LEHRICH. I have the May 17th as well as the September 27th bulletins, and they make one complete unit.

Mr. ISSEKS. Your Honor, we asked for it and never received it, but I will offer it sight unseen.

The COURT. That will be stricken out.

Mr. LEHRICH. Your Honor, everything that is being offered here he got from us by asking for it.

Mr. ISSEKS. There is no dispute about it.

Mr. LEHRICH. But he keeps making that remark during the trial to give your Honor the impression that we withheld something.

The COURT. I want to make the comment that it is not giving me any impression and it is not doing anybody any good, except the reporter, possibly. So let us eliminate that.

189 Mr. ISSEKS. Your Honor, I would like to withdraw my offer, because apparently there are a lot of documents here and I would like to offer them all in bulk, sight unseen.

The COURT. Then you withdraw Exhibit 46?

Mr. ISSEKS. Yes, sir. I would like to offer them in the order that they are here. I have not got a set for your Honor. The first document is dated May 17, 1933. I cannot identify it in any other way except by its date. It begins, "This letter contains an announcement of great importance, the inauguration of the Soft-Lite Registered Dispensing License."

The COURT. Do you want that marked separately?

Mr. ISSEKS. As the first document; yes, sir.

(Marked "Government's Exhibit 46.")

Mr. ISSEKS. I offer as the next Government's exhibit, No. 47, a two-page document which bears no date. It is headed at the top "Soft-Lite Registered Dispensing License—Information Sheet." The first sentence reads:

"Attached is a complete set of the forms to be used in conjunction with the Soft-Lite Registered Dispensing License."

(Marked "Government's Exhibit 47.")

Mr. ISSEKS. The next one I offer consists of three pages,

190 your Honor, dated May 18, 1933. On the top it states "Supplements To Soft-Lite Slants." Then it says, "To Soft-Lite Salesmen. A new slant on Soft-Lite, of great importance."

(Marked "Government's Exhibit 48.")

Mr. ISSEKS. Then the next one is dated September 27, 1933. It says, "To Orthogon Franchise Dealers." On the top it says in handwriting, "Letters to those who did not sign." This is signed by Mr. R. G. Landis. I offer that as the next Government exhibit.

Mr. SEYMOUR. I would like to see it.

The COURT. I will arrange for you to see this whole group in just a moment, Mr. Seymour, and I will reserve your right to move with respect to them. This will perhaps expedite it.

(Marked "Government's Exhibit 49.")

Mr. ISSEKS. Then I offer as Government Exhibit 50 a letter of the same date, addressed to Orthogon franchise dealers, signed "Soft-Lite Lens." There is a notation on the top in somebody's handwriting, "This letter was sent to those who already signed."

(Marked "Government's Exhibit 50.")

Mr. ISSEKS. Your Honor, I will also now offer the document that I once offered and that was withdrawn, because that is not addressed to Orthogon franchise holders but it is addressed to

191 Soft-Lite licensees. It is dated September 27, 1933. I offer that as the next Government exhibit. It is substantially identical with Government's Exhibit 49.

(Marked "Government's Exhibit 51.")

Mr. ISSEKS. I have one more document. It is dated October 12, 1933, and signed by the witness, apparently. "Soft-Lite Lens Company, President," and in the left-hand corner, "N. S." I offer that as the next Government exhibit.

(Marked "Government's Exhibit 52.")

Mr. LEHRICH. Have we seen those that you have just offered?

Mr. ISSEKS. I got them from you.

The COURT. That is not sufficient, Mr. Isseks. The fact that you got them from the defendants is not sufficient.

Mr. ISSEKS. I assumed my associate shows it to them.

The COURT. I will ask you to do this: I will ask you to show defendants' counsel Exhibits 46, 47, 48, 49, 50, 51, and 52, and we will wait until they have had a chance to examine them.

Mr. SEYMOUR. My objection to those exhibits continues as before, as not binding on Bausch & Lomb. There is no occasion to refer to it specifically in view of your Honor's ruling.

192 The COURT. Is there anything further with respect to that? If not we may proceed.

Mr. ISSEKS. I understand that counsel have been unable to locate the form of old prescription license. Now reference was made to an order of——

Mr. LEHRICH. That is not what I told Mr. Isseks. I told Mr. Isseks that Mr. Landis is having some trouble in arranging them chronologically to his own satisfaction. I told Mr. Isseks before I would give him a definite answer on that after we have had Mr. Landis check with the girl who handles that and who knows all about it. It is not a question of locating them, because they are here, but it is a question of getting them in their chronological dates.

Mr. ISSEKS. Reference was made by counsel to an order of the Federal Trade Commission. I have a photostatic copy of the order, dated June 23, 1938, furnished us by counsel for Soft-Lite, and I would like to offer the order in evidence.

The COURT. Are you offering it as evidence, or are you merely calling it to my attenton?

Mr. ISSEKS. I call it to your Honor's attention as a fact that took place.

The COURT. I assume that I always have the privilege of looking at orders of the Federal Trade Commission by walking upstairs to the library and looking at them.

Mr. ISSEKS. I am satisfied with that.

193 The COURT. Which do you want?

Mr. ISSEKS. I will indicate what the document is. Docket No. 2117, in the Matter of Soft-Lite Lens Company, a corporation. The date of it is June 23, 1938.

Mr. LEHRICH. I do not think that your Honor would see there the report of compliance. I do not know whether those are published with the orders.

The COURT. It will facilitate my work if you will give me a copy so I do not have to look it up.

Mr. LEHRICH. I have no objection to the order going in.

Mr. ISSEKS. There is the complaint, the findings of fact and conclusions, and the order to cease and desist. If they want to furnish your Honor with the report of compliance, it is all right with us.

The COURT. I will take them as brief material, but not as evidence of what those documents contain.

Mr. ISSEKS. It is all right with us.

The COURT. You can number them if you want to, but I do not think you need do it.

Mr. SEYMOUR. There is no question that this evidence is not admissible against Bausch & Lomb. This is peculiarly the kind of thing that by no possibility could be binding on them at this stage of the case.

194 The COURT. At any rate I am receiving it as material that you could incorporate in a brief rather than introduce as evidence in this case. The only aspect with respect to which I deem it evidence is that there was a decision.

Mr. ISSEKS. That is right.

The COURT. That is all. Not as proof of the facts contained.

Mr. LEHRICH. Along those lines may I then offer to your Honor the report of compliance and the bulletins that went out, that are referred to in the report, and the letter from the Federal Trade Commission acknowledging the receipt of all those.

Mr. ISSEKS. Your Honor, counsel have an opportunity later. I am going to offer as evidence the notices that went out by the corporation to its respective licensees, because I think becomes material in the case.

The COURT. That is a different thing; but if Mr. Lehrich wants to give me those other documents I will take those.

Mr. LEHRICH. Those notices are referred to in the report of compliance.

The COURT. Very well, I will take it, but not as evidence.

Mr. ISSEKS. I have no objection, but I want to offer these two documents.

195 The COURT. I take these as supplements to your trial memorandum.

Mr. ISSEKS. I have never seen the alleged report of compliance, and I would like to have an opportunity of seeing it some time. Counsel may furnish me with a copy if they have a copy here.

The COURT. Or you may look at it on this bench during the recess.

Mr. ISSEKS. I am going to offer something in a minute to show that they did not comply, and that is the purpose of my proof. This is a letter of July 27, 1938, addressed to Soft-Lite licensees, by R. G. Landis, vice president, and I have a copy for your Honor. This, as counsel has indicated, is a notice to the trade telling them of the order, stating it is by consent, and pointing out that they have to desist from certain practices. Your Honor will read what the practices are by reading the document I have just shown to your Honor.

The COURT. You offered it in evidence?

Mr. ISSEKS. Yes, your Honor.

Mr. SEYMOUR. If I understood counsel correctly, he said the purpose of the offer was to show noncompliance.

The COURT. No; that referred to another document. I have here a form letter sent out by the defendant Soft-Lite to Soft-Lite licensees, dated July 27, 1938.

196 Mr. ISSEKS. How does it begin, your Honor?

The COURT. It begins "By consent." That is not the document to which Mr. Seymour refers.

Mr. ISSEKS. That is right. I am going to refer to two others in just a minute, after this.

(Marked "Government's Exhibit 53.")

Mr. ISSEKS. Another document, your Honor, of the same date, July 27, 1938, signed by the same person, Mr. Landis, to Soft-Lite licensees, and it reads:

"In connection with the Soft-Lite license agreement now existing," and changes the language of the license agreement. I would like to offer that one.

(Marked "Government's Exhibit 54.")

Mr. SEYMOUR. If your Honor pleases, Mr. Isseks said in offering these documents, if I understood him correctly, that his purpose was to show noncompliance. I am anxious to object to exhibits that are offered on such a theory.

The COURT. You are in error about that. I understood him to say he would offer some material with relation to noncompliance, but I understand these letters are not that evidence.

Mr. ISSEKS. I have never seen the report of compliance,
196-A and I am a little in the dark. I am going to show that in September 1938, a month and a half after the last exhibits——

Mr. LEHRICH. Your Honor, I can stipulate with Mr. Isseks that from the date of mailing of that order of filing the report of compliance, up until February 1939, when we printed the new forms we used the old form with the bulletin construing the old form. What he is going to offer is a copy of the old form, using that intermediate period, with an accompanying rider explaining that language was to be construed in accordance with the order of the Federal Trade Commission.

The COURT. You will have an opportunity to explain it in full.

197 The COURT. Well, you will have an opportunity to explain, of course. If he wants to arrange a stipulation with you I will go along with it, but if it is going to take longer than to offer the evidence in routine fashion, let us do it in the most expeditious form.

(Marked "Government's Exhibit 54.")

Mr. ISSEKS. Now I offer a letter dated September 6, 1938, to H. B. Cannon, Fort Worth, Texas, signed Self-Lite Lens Company, R. G. Landis, as the next Government exhibit.

Mr. SEYMOUR. I still do not know when the offer Mr. Isseks referred to is being made——

Mr. ISSEKS. Now is the time.

Mr. SEYMOUR. I object to any evidence of that kind in this case as incompetent, irrelevant, and immaterial, in addition to the grounds previously stated, which bears on a question of compliance or noncompliance. There is nothing in this case which makes the issue of noncompliance an issue in this case.

The COURT. I have a letter here. I assume your objection is addressed to the proposed exhibit 55.

Mr. SEYMOUR. It is objected to, but Mr. Isseks says——

The COURT. I don't care what Mr. Isseks says he intends

198 to prove by the witness. I read the letter and it is of the character we have been receiving right along and it is merely an additional one. Maybe in his brief he is going to argue this proves noncompliance, but I am going to admit it for what it says, and it says that the company is advising someone they are glad to welcome him as one of the licensees and what the object of the license is. There is a communication by the defendant. I don't see why it is not admissible, and the fact that Mr. Isseks says it proves something which you do not think he ought to prove is utterly irrelevant. Isn't that so?

Mr. SEYMOUR. It seems to me when he bases his offer of proof on a statement to your Honor that the basis is the following, I am entitled to object if that basis has not anything to do with this case.

The COURT. That is right, but look at the notice. I say it is admissible on general grounds as relevant to the general issues in this case and I will receive it in that form.

(Marked "Government's Exhibit 55.")

Mr. ISSEKS. I now offer the enclosure referred to in Government's Exhibit 55, namely, the Soft-Lite Lens registered dispensing certificate, going to a prescription licensee. It is made out the same date, September 6, 1938. The licensee is Mr. H. B. Cannon, Fort Worth, Texas, and is signed by Soft-Lite
199 Lens Company, and I direct your Honor's attention to paragraph 3 of the license and ask counsel whether he will stipulate that is the prescription license that was used prior to some time in February 1939. I have a copy for the clerk and a copy for your Honor.

Mr. LEHRICH. We will stipulate that is the same form used before 1938 and up to February 1939.

The COURT. It was issued before February 1939. There is nothing stating it was used on September 6, 1938.

Mr. LEHRICH. With a rider.

Mr. ISSEKS. Where is the rider? The letter, Government's Exhibit 55, does not say a word about a rider.

The COURT. Is it your purpose to say that this letter is not the enclosure or the whole enclosure?

Mr. LEHRICH. That is not the complete enclosure. The testimony will show for that period, up until the time we corrected the new licenses, we used our old forms with the rider.

The COURT. Of course if that is in issue it will be up to you to prove that was all there was in that letter, and you will prove it in the usual form if it is material to your case. Meanwhile I will receive it for what it is worth and no more than that.

Mr. SEYMOUR. As it is offered on the same basis as the
200 former one, I will make the same objection and I assume your Honor will make the same ruling.

The COURT. I will receive it as a communication also sent by the defendant company, Soft-Lite, to one of its licensees, and the only issue here involved is whether this is the whole communication or only part of it. I understand that counsel for the defendant Soft-Lite claims this was only part of it. I assume that the witness is not in position to testify as to where the truth lies, is that correct?

The WITNESS. The truth lies with our attorney.

The COURT. Of course you trust him, but I mean you do not know of your own knowledge whether this is the whole letter or only part of it.

The WITNESS. I think that we used a form that was already printed, and——

Mr. ISSEKS. I move to strike out the witness's answer.

The COURT. That motion will be granted. Now let me rule on the situation and proceed with our business. This document, Exhibit 56, will be received for what it is worth, namely, as a claimed document which, at least in part, went to a customer of the defendant Soft-Lite. I will expect the Government to prove that this was the whole communication that went to the customer. If the Government fails to prove that I will entertain a
201 motion at the proper time to exclude this document from evidence.

Mr. ISSEKS. May I be heard a moment?

The COURT. Certainly.

Mr. ISSEKS. It seems to me we will try to get any additional proof we can. Maybe we will get Mr. Cannon here and maybe that is the best way. We are going to have people from Texas anyway and another one won't do any harm.

Mr. LEHRICH. You may get Mr. Landis who is here and he may be able to testify.

Mr. ISSEKS. The letter speaks for itself. It says, "Upon the enclosed registered dispensing certificate," and it does not say a word about an amendment, or reference to it, and we rely on the document. If necessary, and if they call Mr. Landis and he says there was an enclosure, we will find out from Dr. Cannon.

The COURT. Very well. For the present it is in with the caveat that I have indicated.

(Marked "Government's Exhibit 56.")

Q. Now, Mr. Singer, was a prescription licensee asked to fill out any form like the stock licensee, Government's Exhibit 44?

Mr. LEHRICH. In what period?

Mr. ISSEKS. Since 1939.

202 A. Do I understand you to say, Mr. Isseks, that, or understand you to ask, whether or not a prescription licensee was asked to sign the application, the registered dispensing application?

Q. That is right, any time. First since 1939.—A. I do not think so. I think that was done by—you are asking me something I have not handled in ten years.

Q. All you have to say is you do not know, and that is a good answer.—A. I do not know.

Q. Thank you very much.

Mr. ISSEKS. I now offer in evidence what I understand to be the registered dispensing license, prescription license, of the Soft-Lite Lens Company, since some time in February 1939. I would like to show this copy to your Honor, and I assume Mr. Lehrich has a copy, and I have a photostat to be marked. The photostat includes the photostat of the front and the back, and I call your Honor's attention to paragraphs 1, 2, and 5 of this document.

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 57.")

Q. Mr. Singer, at one time did your company put all the Orthogon franchise holders on your list of retail licensees?—A. I do not know.

Q. You did not bother about that, did you?—A. What do
203 you mean?

Q. You were not even told about it?—A. I will have to give you an answer a little more direct. You are talking about something that looks very legal to you, and we considered that all good advertising along the line of putting a halo——

Mr. ISSEKS. I move to strike out the answer——

The COURT. Motion granted. Let us get the question fixed on the precise issues.

Q. I will repeat the question. Were you advised some time in the last five or six years that your company decided to put all Orthogon franchise holders on your list of retail licensees?

Mr. LEHRICH. I object to that question because it assumes a state of facts not in evidence. I object to the form.

Mr. ISSEKS. I will rephrase that question.

The COURT. I will sustain the objection. Let him ask first whether such a thing happened, if he knows.

Mr. ISSEKS. That is right.

Q. Did your company at one time put all the Orthogon franchise holders on your list of retail licensees?—A. We supplied them with Orthogon——

204 The COURT. No; Mr. Witness. There are three possible answers available, "Yes," "No," or "I do not know."

The WITNESS. I do not know.

Mr. ISSEKS. At this time I offer, your Honor, a memorandum which was furnished by counsel for Soft-Lite, addressed to R. G. L., signed A. F. I., on the stationery of A. F. Immig, dated 4/17—no other date. I offer it for the truth of the matter asserted therein, and as showing what is set forth therein.

Mr. SEYMOUR. May I look at it?

Mr. ISSEKS. Certainly [handing]. I will give you the one I am offering because that is the only one that is legible.

Mr. LEHRICH. I assume if it is merely offered as a memorandum coming from our office, and that I furnished Mr. Isseks with a copy, I am not questioning its genuineness, but there is a serious dispute as to whether those are the factual statements. I cannot stipulate as to that.

The COURT. He is not asking you to stipulate but he is offering it in evidence.

Mr. LEHRICH. He made a preliminary recital.

The COURT. He wants to offer it as an admission and as a communication taken from the defendant's files.

205 Mr. LEHRICH. For what the admission may be worth?

The COURT. I don't know. I am going to read it now. Who is Mr. Immig?

Mr. ISSEKS. I will ask the witness.

The WITNESS. He was a correspondent and assistant to Mr. Landis—a clerk.

Mr. SEYMOUR. I object to it on behalf of Bausch & Lomb, in addition to the grounds previously urged, as incompetent, irrelevant, and immaterial.

The COURT. Overruled.

Mr. SEYMOUR. Exception.

The COURT. Will you look at this memorandum, Mr. Witness, and tell me whether that refreshes your recollection on the question previously asked of you.

The WITNESS. That does not sound like a fact.

The COURT. That is not what I asked you.

The WITNESS. No; it would not refresh my memory.

The COURT. Does not refresh your memory?

The WITNESS. No.

The COURT. I will receive it in evidence as Government's Exhibit 58.

(Marked "Government's Exhibit 58.")

Mr. ISSEKS. Unless your Honor objects, I would like to
206 direct your attention to two other exhibits which have reference to the same subject matter.

The COURT. Before you do that, I just want to ask this witness a question.

By the COURT:

Q. You said you did not know whether the Orthogon people were put on the Soft-Lite list, but when you looked at this memorandum you said that did not sound like a fact. Do you know the contrary to be the fact?—A. I think I can answer that. That so far as I know—you said to answer yes or no, or I did not know. If I divide it in two ways, I can give an answer. We may have taken all Orthogon users or franchise holders and put them on our mailing list for advertising, because everyone was a prospective Soft-Lite user. I say "all," no; all Orthogon dealers may buy Orthogon Soft-Lite lenses. I do not recall at any time that we ever automatically added Orthogon dealers onto our list, so we had nothing to do with that list. That is why I answered that way.

Q. Let me see if I understand what you tell me, and that is that by some action of Soft-Lite at one time all Orthogon dealers were authorized to purchase Soft-Lite lenses?—A. In Orthogon.

Q. In Orthogon.—A. Only in Orthogon.

Q. But you do not know whether you physically added the names of the Orthogon dealers to the list of Soft-Lite
207 licensees?—A. Never. That was never done.

Q. But you may have added them to your mailing list for the purpose of their receiving literature?—A. Yes, sir. That is the whole answer.

The COURT. Very well, I think we can make progress on that.

Mr. ISSEKS. I am not satisfied, so I would like to continue.

The COURT. Certainly.

By Mr. ISSEKS:

Q. You testified within twenty minutes that Government's Exhibit 37, and I have a copy here, which is your price-list for January 2, 1940, and to which reference is made in the welcoming letter, pages 17 to 20, sets forth your licensee plan?—A. Yes, sir.

Q. There is no doubt about that in your mind, that that sets forth your licensing plan?—A. Again, yes, sir.

Q. I call your attention to the second full paragraph under the heading, "The Soft-Lite License-Sales Plan," which reads as follows, the second sentence: "Orthogon Franchise Dealers who are not Soft-Lite prescription or stock licensees, are automatically listed as Soft-Lite prescription licensees." Does that conform with your understanding of what the arrangement was?—A. It would be easier if you would let me read it all.

208 Q. I will read the rest of it.—A. No; may I read it?

Q. I will read it and I will give you the actual exhibit. The rest reads: "So that they are entitled——"

Mr. LEHRICH. Now, if your Honor please, I object——

Mr. ISSEKS. I submit I should be permitted to continue without interruption.

The COURT. I will permit you to continue.

Q. (Continuing.) "So that they are entitled to purchase Soft-Lite lenses in regular certified series on a prescription basis. Soft-Lite licenses are not transferable." Does that refresh your recollection at all?—A. I should like to read it myself.

The COURT. Take your time and read it.

The WITNESS. (Uninterrupted.) Was that the third paragraph, Mr. Isseks?

Q. No, sir; the second full paragraph and the second sentence. You can read the first sentence, too, if you want.—A. [No answer.]

Q. Have you read it, sir?—A. I can answer your question in this way: when you refer to Orthogon franchise dealers I assumed you were talking about the Orthogon stock dealers. You are referring only to the prescription retailers; Orthogon franchise dealers who are prescription accounts. They were given the privilege apparently at that time to buy on prescription the Soft-Lite in Orthogon or certified, and the reason was that the wholesaler sold Soft-Lite lenses to any prescription account anywhere.

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Q. You were asked by the Court whether Government's Exhibit 58 refreshed your recollection, and you stated voluntarily that it did not state a fact. Mr. Immig states, "Kirkland Optical Company of Utica was put on the prescription list"—excuse me, it says, "Rx," meaning prescription, "as a result of adding of Orthogon franchise holders to our account." Was it a fact or wasn't it a fact, and I direct your attention to page 17 of Government's Exhibit 37, which you also state sets forth the plan of your corporation——A. In the light of what I have just read I can tell you why I was confused——

The COURT. No. First answer whether it was a fact.

The WITNESS. It still is not a fact, because of a word in it.

The COURT. Now you can explain.

The WITNESS. All right. In the light of the answer given, Kirkland Optical Company of Utica was taken to be a wholesaler and when we read that Kirkland Optical Company is a prescription account, and I see it stated they were adding all Orthogon franchise dealers to our account, I certainly thought he was referring to an Orthogon dealer and not a prescription account. It is customary for a concern like Kirkland Optical Company to buy on prescription from a wholesaler and not on a stock basis, and we have no account with Orthogon franchise dealers as such only if they are on our Soft-Lite customer list.

210

Q. I again direct your attention to the second paragraph of page 17 of Government's Exhibit 37, and ask you whether that is a fact, "Orthogon franchise dealers who are not Soft-Lite prescription or stock licensees are automatically listed as Soft-Lite prescription licensees."—A. That is right.

(Short recess.)

Mr. ISSEKS. I would like to have the last question and answer read to the witness, since I am going to ask him another question, and I think it will be easier if he heard the last question and answer.

The COURT. I am sure the reporter will accommodate you.

(Question and answer read.)

Q. And when were the Orthogon franchise dealers put on the Soft-Lite prescription list?—A. I presume at the same time of that announcement.

211 Q. The exhibit itself is a price-list of January 2, 1940.—A. I presume that was that time.

Q. It must have been before that too, wasn't it?—A. I do not know.

Q. See if I can refresh your recollection: I show you a price-list of uncut Soft-Lite lenses, Toric and Orthogon forms, October 1, 1929, and direct your attention to a page which has on the top "Stock Discounts," and then has a heading "Orthogon Soft-Lite lenses," and particularly to the notice to Orthogon franchise dealers, and ask you whether that refreshes your recollection that it was as early as 1929 that Orthogon franchise dealers were given the same privileges as Soft-Lite licensees?—A. We must differentiate, Mr. Isseks, between prescription and stock accounts. This is stock and the other is prescription, and that paragraph does not apply——

Q. To stock?—A. This privilege doesn't apply to prescription Orthogon dealers of getting their Orthogon lenses at a stock price unless they were either Orthogon stock dealers or Soft-Lite stock dealers. You are talking about Orthogon franchise dealers' prescription accounts. They had the privilege of buying Orthogon Soft-Lite on prescription even though they were not on the Soft-Lite list, provided they were Orthogon franchise dealers. We extended the privilege I presume at that time to have them buy

212 Noglare or certified series Soft-Lite on prescription, even though they were not on the Soft-Lite list. This refers entirely to stock buyers and not to your prescription accounts.

By the COURT:

Q. And what is the fact with respect to stock buyers? When did they get that privilege?—A. Well, as far back as 1929.

Q. Let me see if I understand: persons who had an Orthogon stock license arrangement had the privilege of buying Soft-Lite Orthogon on a stock licensee price basis?—A. Yes, sir.

The COURT. All right.

Mr. ISSEKS. Now, your Honor, I don't want to offer this entire document because it is a price-list, but I would like, subject to any objection, to offer and read into the record a part of this price-list beginning, "To Orthogon Franchise Dealers." It is dated October 1, 1929.

Mr. SEYMOUR. In addition to the objection which continues, it does seem to me we are getting a little far afield from our case in going into the Orthogon situation.

Mr. ISSEKS. I do not intend to go into the Orthogon situation.

The COURT. So far he is offering evidence showing the
213 make-up of the Soft-Lite list which happens to include persons who deal in Orthogon.

Mr. ISSEKS. That is right.

The COURT. And he is addressing himself not to the Orthogon list but to the Soft-Lite list.

Mr. SEYMOUR. It does seem to me that it goes beyond that, and I object to it because it does not deal, it seems to me, with any issue in this case.

The COURT. He is trying to identify which persons and which classes of persons were permitted to deal in Soft-Lite.

Mr. ISSEKS. That is right.

The COURT. One of the elements of his case is that it was a restricted class, a selected class. Presumably he wants to go into the basis of selection at some time in this case. Meanwhile he is laying down which groups of the population were permitted into this lens family, and one of the groups he has just proved, or attempted to prove, is those persons who were authorized to buy Orthogon on certain terms and within certain classifications, so I must overrule your objection.

Mr. SEYMOUR. Exception. One thing that troubles me about this feature is, he read in portions of the document in lieu of offering the document, and we will want to know at some time, and your Honor will want to know, I presume, the precise form
214 of the document. In view of the fact he is only reading a portion of it, the balance will not be in evidence, for example, in every case where he has read a portion, the document appears in other portions to be a price-list or an announcement issued by the Soft-Lite Company. If it is clearly understood that as to all those read in they are issued by the Soft-Lite Company, and so appear in the balance of it, we won't have any controversy over it, and I do not suppose there is any doubt——

Mr. ISSEKS. Oh, no.

The COURT. I understood the record identified the document, and I also made the suggestion that it be marked for identification so you and your codefendants might read additional portions out of that document or offer it in evidence.

Mr. SEYMOUR. I don't want to encumber the record any more than Mr. Isseks or your Honor wants to, so I want it clearly understood we are at liberty to refer to the balance without encumbering the record.

Mr. ISSEKS. Certainly.

Mr. SEYMOUR. For the purpose of showing, unless Mr. Isseks points out something to the contrary, that it is a price-list or some other document issued by Soft-Lite.

The COURT. Yes. Whatever the character of the docu-
215 ment is, the record will disclose, so you may read from it.

(Marked "Government's Exhibit 59" for identification.)

Mr. ISSEKS. I would like to read from this price list of "Uncut Soft-Lite Lenses. Toric and Orthogon Forms. October 21, 1929," a portion, and so that there may not be any dispute, I was only going to read part of it, but I will read everything under the heading "Orthogon Soft-Lite Lenses." The first heading underneath that is, "To Soft-Lite Licensees:

"Orthogon Soft-Lite Uncut Single Vision Lenses (in Orthogon stock foci only, as outlined by the Bausch & Lomb Optical Co.) 25 per cent and 2 per cent.

"Non-Stock Orthogon Soft-Lite Lenses, 2 per cent. Note: It is not necessary that a Soft-Lite Licensee be an Orthogon franchise dealer to be entitled to this discount on Orthogon Soft-Lite Lenses. This does not, however, carry the privilege to the purchase of white Orthogon lenses.

"To Orthogon Franchise Dealers:

"Such dealers are entitled to their regular Orthogon trade discount on Orthogon Soft-Lite Uncut lenses and blanks in foci and forms which they are permitted to purchase in regular white Orthogon lenses at the trade discount from the Bausch & Lomb Optical Company.

216 "Note.—It is not necessary that the above-mentioned franchise dealers be Soft-Lite licensees as well, to be entitled to these discounts. This does not, however, carry the privilege to the purchase of regular Toric Soft-Lite Lenses. All other Orthogon Soft-Lite Lenses and blanks than those mentioned above (non-stock) 2 per cent."

By Mr. ISSEKS:

Q. Did you have any conversations with anybody at Bausch & Lomb with regard to the subject matter of what I just read?—A. I did not.

Q. Did anybody in your company report to you of any conversations they had with Bausch & Lomb with regard to the subject matter I have just read?—A. I know of none.

By the COURT:

Q. Mr. Singer, by white lenses, you mean untinted ones. You do not mean tinted?—A. No; the white are the natural form.

Q. That is called white?—A. Yes.

By Mr. ISSEKS:

Q. Mr. Singer, you have a regular procedure, do you not, for terminating the relationship between an existing stock or pre-

scription retail licensee and the Soft-Lite Company?—A. I believe so. I do not handle that at all.

217 Mr. LEHRICH. We can stipulate all that, your Honor.

The COURT. In other words, counsel says the answer is "Yes"?

Mr. LEHRICH. That is right.

The COURT. All right. We will take it as that.

Q. You send a notice, do you not, to the licensee, telling him——

Mr. LEHRICH. I offered to stipulate to cut this down and cut down this sort of examination. Mr. Singer does not know anything about this procedure and it is a waste of time.

The COURT. Are you willing, Mr. Isseks, that Mr. Lehrich state what the procedure is?

Mr. ISSEKS. Yes; surely.

The COURT. Will you state the procedure.

Mr. LEHRICH. When we remove a stock licensee from our list, and this is since 1933, we send a notice to the retailer, and all wholesalers, that he has been removed, and there were copies of the notices given to counsel for the Government. There is no dispute about that.

The COURT. That is the procedure for terminating the license of a retail licensee?

Mr. LEHRICH. That is right.

218 Mr. ISSEKS. And I understand they send a notice to the various wholesalers listing them, periodically, notices sent out periodically, listing those who have been added and who have been taken off. That is so, too, isn't it?

Mr. LEHRICH. That is correct.

Mr. ISSEKS. I now offer some of those notices, as a matter of fact all that have been furnished us. I would like to offer them as one exhibit with alphabetical numbers. There is no date on the first one, but it says "Soft-Lite stock licenses issued since July 1, 1936," and then it has those prescription licenses since that time and the cancellations since that date.

Mr. LEHRICH. In view of the stipulation, I think this is merely cluttering up the record.

Mr. ISSEKS. I am sorry.

Mr. LEHRICH. I understand there are names of some several hundred licensees, and the additions were published since 1936. It is all stipulated that that is the procedure and I see no necessity for cluttering the record with all this detail.

Mr. ISSEKS. I want to show how many were taken off—hundreds.

Mr. SEYMOUR. For my part of it, in addition to the objection which continues, I cannot see the materiality of the names.
219 I can see perhaps the materiality of the number, which might be the subject of a stipulation.

The COURT. Unless there be some relevance to the names I was going to make the very same suggestion.

Mr. ISSEKS. Your Honor, the names will have a bearing, because I am going to take up some particular ones taken off for various reasons. Those will appear, and I should think the form would be of interest to your Honor and I have not added the number up, but I suppose that can be done without much difficulty.

The COURT. If it is going to take longer to stipulate than to put in the proof, I will take the proof. It seems to me there are many instances of this kind where the record can be abbreviated for everybody's advantage where the facts are not in dispute and where we ought to make a little faster progress. I am not saying this in criticism, but apparently there is a disposition on the part of defendant's counsel to stipulate a great deal, and if there were a jury here I would not listen to that because you are entitled to make your atmosphere, but as there is no jury I do not see that the atmosphere makes any difference, and if you stipulate that there was a notice of cancellation and there was a certain form of it, and such a notice went out over such and such a period to so many hundreds of dealers, if that is what you want to prove,
220 there is no reason why we should have a great many documents. However, if this has not been done and it is going to take longer to work out such a stipulation than to put in the proof, I will let you put in the proof.

Mr. ISSEKS. There are six pieces of paper. I will just read them off and we can mark them that way.

The COURT. Very well.

(Marked "Government's Exhibit 60.")

Mr. LEHRICH. It recites the additions and removals?

Mr. ISSEKS. Yes, sir.

Mr. LEHRICH. Or just the removals?

Mr. ISSEKS. Both. The next is the printed additions and cancellations since January 1, 1937. They are not cumulative but cover the periods involved.

(Marked "Government's Exhibit 60 A.")

Mr. ISSEKS. And then the next one is "Removals and Additions" and this time they are in the reverse order, since August 1, 1937.

(Marked "Government's Exhibit 60–B.")

Mr. ISSEKS. Then the removals and additions since April 1, 1938.

(Marked "Government's Exhibit 60–C.")

Mr. ISSEKS. Then the removals only in this one, since January 1, 1939.

(Marked "Government's Exhibit 60-D.")

221 Mr. ISSEKS. Removals and additions since January 1, 1940. I have no objection, your Honor, to any other lists since then if counsel puts them in. That is the last one I have.

(Marked "Government's Exhibit 60-E.")

Q. Now, Mr. Singer, do you know the reasons for your company refusing, if any, to issue either retail stock licenses or retail prescription licenses?

Mr. LEHRICH. I object to the form of the question.

The COURT. Sustained.

Q. Mr. Singer, did your company ever refuse to issue retail stock licenses?—A. I don't think we ever did.

Q. Never refused to issue a retail stock license?—A. I don't think we ever did. You mean where an application came in that we would reject it?

Q. Yes, sir.—A. I do not think so. There may have been one or two cases of that, but I do not recall any.

Q. Did your company ever refuse to issue any prescription retail license?—A. I think that was always done automatically.

Q. I beg your pardon.—A. They were accepted automatically, if somebody sent the name in.

Q. Who would normally send the name in for an application for a license?

222 Mr. LEHRICH. May I make the suggestion—I do not like to tell counsel how to proceed—this procedure is not handled by Mr. Singer and all his testimony will have to be "I do not know" and "I will have to guess." Mr. Landis is here and he is in charge of all this and all the documents are signed by him and all notices signed by him. We have been asked to have him here as a witness and he will testify on these matters, and I think that Mr. Singer ought to go on with subjects with which he is familiar.

The COURT. Your suggestion may be a good one, but this gentleman is not only a witness but he is a defendant, and if counsel wants to prove what he knows and does not know, I will let him prove it. I am not going to direct him how to try his case. I will take your suggestion under advisement if he feels disposed to take advantage of that. That is his privilege.

Q. Mr. Singer, did your company ever cancel any licenses, as far as you know.

Mr. LEHRICH. Now, if your Honor please, I stipulated that. He offered in evidence a whole list of them. It seems to me it is repetitious.

The COURT. Yes; I think that question is repetitious. You may assume there were cancellations in view of the several hundred names marked in evidence.

223 Mr. ISSEKS. May I ask the witness whether he knows the reasons why they were cancelled?

The COURT. In any particular instance; yes.

Q. Did you have any general policy for cancelling licenses of retail stock licensees?

Mr. LEHRICH. If he knows.

The COURT. This witness is sufficiently adroit to know, if he does not know, that he can answer "I do not know," and we will avoid the necessity of putting that question, "if he knows." Although I think your suggestion is the proper one.

A. I do not know.

Q. Is Mr. Vernon connected with your company in any way?—A. He was.

Q. What was his connection with your company?—A. He was a salesman.

Q. When did he terminate his employment with your company, if you know?—A. About three years ago.

Mr. LEHRICH. I object to the form of that question.

The COURT. About three weeks ago?

The WITNESS. About three years ago.

Mr. LEHRICH. When did he terminate the employment, meaning when did Mr. Vernon conclude he ceased working for the company.

224 The WITNESS. About three years ago, I think.

Mr. ISSEKS. Your Honor, counsel has told us by memorandum that Mr. Vernon left the employ of Soft-Lite on January 31, 1940, and I assume counsel will stipulate that fact.

The COURT. Is there any objection to that?

Mr. LEHRICH. I gave Mr. Glickfeld all the dates and if Mr. Glickfeld says that is the date I gave him, that is correct.

The COURT. Very well, so stipulated.

Mr. ISSEKS. I now offer in evidence, your Honor, a copy of a letter dated October 23, 1939, addressed to Mr. J. Harry Vernon, signed McIntyre, Magee & Brown Company, "Sam" apparently written by S. A. Klein, with the notation on the bottom addressed to R. G. L., signed "J. H. V." I have a copy here for your Honor, and a copy for the clerk and a copy for counsel.

The COURT. Have you offices at 465 West Ellett Street, Philadelphia, Pennsylvania?

The WITNESS. No; I do not know of any.

The COURT. Is that Mr. Vernon's residence?

The WITNESS. It may have been. He lived in Philadelphia.

The COURT. I see there is about to be an objection, and I
225 think it might be well if you laid the groundwork for this communication and bring it home to the defendant company.

Mr. ISSERS. The next piece of paper shows that. The next piece of paper is a letter going from Mr. Landis to Mr. Klein, replying to this letter, and one of the unfortunate things about the trial of a case is that you cannot put but one piece of paper in at one time.

The COURT. Very well. Now I will hear your objection, Mr. Seymour.

Mr. SEYMOUR. My objection is addressed particularly to the top letter in this group, a letter written by somebody in McIntyre, Magee & Brown, apparently Mr. Sam Klein, and I object on the ground that it is incompetent, irrelevant, and immaterial against the Bausch & Lomb defendants at this stage of the case.

The COURT. That is your general reservation.

Mr. SEYMOUR. No; that is in addition to my general reservation. McIntyre, Magee & Brown is not a defendant in this case. It is one of the list of Bausch & Lomb affiliates that were mentioned here yesterday and I expect moreover other documents to be offered of this kind, that is, communications with the Soft-Lite Company and insofar as it is offered against the Soft-Lite Company I am not making my objection, I am making it on
226 behalf of Bausch & Lomb and I submit insofar as Bausch & Lomb are concerned, these are not admissible against it. They are not acts of a co-conspirator. McIntyre, Magee & Brown are not named as a co-conspirator and this is part of a long line and I would like to be heard at some length on it because I think it is important to limit this record to the defendants properly involved.

The COURT. As far as Bausch & Lomb is concerned, my disposition is the same as the general ruling already made. Is there any objection on the part of Soft-Lite?

Mr. LEHRICH. No objection.

The COURT. I personally would consider the objection if it is not indicated that this will be brought home to Soft-Lite by the next exhibit, but the fact is that this tends to bring it home to the defendant corporation.

(Marked "Government's Exhibit 61.")

Mr. ISSERS. I now offer the reply from Mr. Landis to Mr. Klein, which shows that Mr. Klein's letter to Mr. Vernon was given to Mr. Landis, and states what he is going to do. That is the next exhibit, and it has some notations thereon, too, and a notation on the top which I will ask the witness about in a minute.

Mr. SEYMOUR. My objection applies, if your Honor please,

227 to the entire group, and I assume your Honor's ruling would be the same, and I hope the Court will indulge me if the problem arises again in a more full presentation of this objection.

The COURT. Very well. At the present I am admitting it because it is relevant on the question by reason of the second paragraph of Exhibit 61, and the second paragraph of the proposed Exhibit 62 which adopts the second paragraph of Exhibit 61, as the policy of the defendant Soft-Lite, and therefore it is relevant to the issues in this case as far as Soft-Lite is concerned, and possibly with respect to the defendant Bausch & Lomb if the conspiracy may be proved. I will overrule the objection.

Mr. SEYMOUR. Exception.

(Marked "Government's Exhibit 62.")

Q. I show you a copy of Government's Exhibit 62 and direct your attention to the fact that on the top it says "CC: JHV." At that time in 1939 you had an employee whose initials were "JHV" and whose name was John H. Vernon, did you not?—A. Yes, sir.

Q. Also "Carbon to GD," with notation "Please remove him from licensee list. Send him usual cancellation letter and advising all concerned. RG.L." That is Mr. Landis?—A. Yes, sir.

Q. Who is "GD"?—A. That is one of the clerks in the
228 office.

Q. Do you know his name?—A. A girl.

Q. Do you know her name?—A. A Miss Dewey.

Mr. ISSEKS. I next offer the actual notice, dated October 28, 1939, the day after the Exhibit 62. I offer it as a form usually sent, but in this case filled out, as the usual notice given to the various wholesalers, and the reasons set forth right on the notice.

The COURT. This document you handed me goes from whom to whom?

Mr. ISSEKS. I am going to ask the witness about it. Do you want me to ask him now?

Mr. LEHRICH. You see the difficulty is here that Mr. Isseks makes these comments about what the documents mean. All that information on the right hand side about Dr. Harry Lewis, who is also owner of Marcus Rothschild, and so forth, does not go to the other wholesalers who got this notice.

The COURT. That is the reason I made the inquiry but in explanation Mr. Isseks says this is the form filled out that goes to everybody.

Mr. LEHRICH. That is not the fact. The form goes without the notations. The notations remain in our filed copy to tie it up with the sources of the report we got.

229 Mr. ISSEKS. I will take counsel's stipulation.

Mr. LEHRICH. Suppose we use the blank form and then his Honor can see the difference.

The COURT. I understand perfectly clearly. This is a notice to remove from the Soft-Lite licensee list at once and then it gives the name of the person to be removed and then you have typewritten on that a memorandum of the information on the basis of which the action was taken.

Mr. LEHRICH. That does not go to the people on the left-hand side. The people on the left hand side are all the wholesalers in the district that will be servicing this retailer.

The COURT. What do they get?

Mr. LEHRICH. They just get the notice.

The COURT. Simply saying that this account is no longer entitled to the Soft-Lite licensee privileges?

Mr. LEHRICH. Yes, sir; and all the other comment is for our files.

The COURT. Is that stipulated?

Mr. ISSEKS. I will stipulate it. If Mr. Lehrich says it is so I will stipulate it.

The COURT. I will admit it.

(Marked "Government's Exhibit 63.")

Mr. ISSEKS. I would like to offer four other pieces of paper involving this gentleman, Dr. Lewis. The first one is the actual communication that was sent to him. He does not get this form, as I understand it, and counsel can correct me if I am wrong, but he gets a letter, and I would like to offer the letter that goes to him first. It is dated the same day as the notice, October 28, 1939.

230 The COURT. Any objection?

Mr. SEYMOUR. My specific objection to this entire line, in addition to my objection which has been continuing, applies to this as well. My position is that these are incompetent, irrelevant and immaterial, in addition to the reasons I stated as to admissibility in my previous statement of grounds of objection, as to which your Honor reserved.

The COURT. Overruled.

(Marked "Government's Exhibit 64.")

Mr. ISSEKS. I would like to ask counsel for Soft-Lite if they will stipulate that this letter was more or less a form letter that went out to every retail licensee whose license was canceled?

Mr. LEHRICH. I will stipulate that the form just shown your Honor and dated October 28, 1939, is substantially the same form that went to every retail licensee, and that the other form introduced a minute ago was the notice that went to the wholesalers about the removal of the retail licensee.

The COURT. It is substantially the form of the notice that went to any canceled licensee.

Mr. LEHRICH. That is right.

The COURT. That is Exhibit 64. And Exhibit 63 is the
231 form, without the typewritten insertion which went to the wholesalers, notifying them that a customer of theirs was to be dropped from the list.

Mr. ISSEKS. Now, I would like to offer in this particular case Dr. Lewis's reply, which is dated October 31, 1939, addressed to the Soft-Lite Lens Company.

The COURT. I take it that is not a form.

Mr. ISSEKS. No; it is not offered as a form. The next two letters thereafter are offered as forms.

The COURT. Without objection it will be received.

Mr. SEYMOUR. I have an objection.

The COURT. Except your general objection.

Mr. SEYMOUR. I have a general objection, and a specific objection. My general objection is that there is no foundation laid, and that we have discussed and your Honor has reserved on that so I understand I do not have to state that each time.

The COURT. That is right.

Mr. SEYMOUR. I make another objection to this line, and I press it as to each document in the line—that it is incompetent, irrelevant and immaterial as to our clients, insofar as this is a transaction and a series of letters between Soft-Lite, McIntyre, Magee & Brown, and Dr. Harry H. Lewis, none of which could be binding on our clients or be relevant or material in this case.
232 The COURT. I will overrule your objection. I might state that these documents show a course of conduct on the part of Soft-Lite. Without passing on the question that that is unlawful conduct, but assuming that for the moment, and assuming that it subsequently appears that this conduct on the part of Soft-Lite was engaged in as a result of an agreement and conspiracy with Bausch & Lomb, these would be admissible against Bausch & Lomb, although this particular document may not be brought home to Bausch & Lomb.

Mr. SEYMOUR. Your Honor, insofar as they were acts or steps in the course of a conspiracy, or say they were acts of a conspirator, that would undoubtedly be so if the predicate that your Honor has indicated be laid. I am still in doubt how a letter from a third person could be admitted even on that theory. Here is a letter from Dr. Lewis, and there may be other letters to come where somebody has written in to Soft-Lite. That is not an act of a coconspirator or an act in pursuance of a conspiracy. There is no theory on which that can be admitted unless it is brought home.

The COURT. The response from the recipient of the letter may be strictly a little remote, but I think you can show a body of correspondence as a complete unit, a letter and the reply, at least, to show that the recipient was informed of the contents of the
233 letter that he received. I will overrule your objection.

Mr. SEYMOUR. Exception.

(Marked "Government's Exhibit 65.")

Mr. ISSEKS. I now offer the letter from Mr. Landis to Mr. Klein. While I think it may be a little out of order I want to point out what it encloses. I offer as Government's Exhibit 66 a letter dated November 2, 1939, to Mr. Klein from Mr. Landis, enclosing a copy of Dr. Lewis's letter.

Mr. SEYMOUR. May it be understood, if your Honor pleases, that this objection to these transactions, which your Honor has just ruled rather generally on, may continue as well. That is, insofar as counsel for the Government is offering correspondence between Soft-Lite and wholesalers or licensees whose licenses are cancelled. I make the two objections which I have already presented and which your Honor has overruled. I do not want by not objecting each time to waive objection to their competency, relevancy, and materiality in addition to the objection that no foundation has been laid.

The COURT. Not competent?

Mr. SEYMOUR. Competent not (competency not) in the sense of making any claim that the letter is not authentic because the writer is not called, but that correspondence by third persons not charged to be members of the conspiracy could not be admitted
234 as acts of an agent or conspirator in pursuance of the conspiracy.

The COURT. Very well. Of course, this last one, Exhibit 66, is a letter from the defendant Soft-Lite, and therefore is not subject to the additional objection that you have made.

(Marked "Government's Exhibit 66.")

Mr. ISSEKS. I now offer Mr. Klein's reply, of November 4, 1939, to Mr. Landis, on the stationery of McIntyre, Magee & Brown.

The COURT. To that I understand you have a special objection?

Mr. SEYMOUR. Yes.

(Marked "Government's Exhibit 67.")

Mr. ISSEKS. Your Honor, in connection with Government's Exhibit 67 I call your Honor's attention to a notation on Government's Exhibit 65 which reads:

"No answer to be made per S. A. Klein letter 11/4."

I now offer, your Honor, a letter dated March 28, 1939, addressed to the Soft-Lite Lens Company, signed Riggs Optical Company, Kenneth Smith, Manager, referring to certain Soft-Lite ac-

counts, and I particularly offer the last paragraph of the letter.

235 The COURT. You mean you call attention to the last paragraph of the letter.

Mr. ISSEKS. I call attention to the last paragraph of the letter; yes.

Mr. SEYMOUR. May I ask Mr. Isseks whether he is planning now to offer a number of letters of this type?

Mr. ISSEKS. Oh, yes; I am going to offer about 50 or 60.

The COURT. All to and from wholesalers?

Mr. ISSEKS. Principally Bausch & Lomb affiliates to Soft-Lite, and from Soft-Lite to the Bausch & Lomb affiliates and occasionally somebody else; and then the form of notice going out to the wholesalers.

The COURT. Then let me first read this letter before I hear Mr. Seymour. You are now offering the letter of March 28, 1939; is that correct, Mr. Isseks?

Mr. ISSEKS. Yes, your Honor.

The COURT. And that is the letter to which Mr. Seymour wants to make an objection and wants to be heard more extensively.

Mr. SEYMOUR. If your Honor will bear with me. This is a letter written by the Riggs Optical Company, which is one of the companies affiliated with Bausch & Lomb, and counsel for the Government says that other such letters will be offered. As I

236 understand the system of distribution to which testimony has been addressed here and which has been the subject of references by counsel by way of stipulation and otherwise, the retail licensees are licensed on the recommendation of a wholesaler with whom Soft-Lite deals.

The COURT. Or a field representative of Soft-Lite itself.

Mr. SEYMOUR. Or perhaps a field representative of Soft-Lite itself. The letter in question, perhaps the last letter, indicates that the wholesalers from time to time made recommendations to Soft-Lite as to cancellation of licenses. It is quite evident that they did not themselves cancel the licenses, that they merely sent in a recommendation and then Soft-Lite decided what to do. The fact that this letter is from a Bausch & Lomb affiliate and not from an independent wholesaler who we may assume followed the same procedure, seems to me not to make the letter admissible. Unless it is admissible aside from the fact that it came from a Bausch & Lomb affiliate it seems to me that the objection to it ought to be sustained.

The COURT. I wish you would address yourself to it on the theory that it is not a Bausch & Lomb affiliate, because that is the way I want to treat it for the present.

Mr. SEYMOUR. Treating it that way, and not arguing on the question of affiliation, on which I would like to say some-
237 thing if it were appropirate, it seems to me that insofar as it is offered against Bausch & Lomb, the conduct, the action, the letter of such a wholesaler is inadmissible, because the wholesaler is not charged to be a member of this conspiracy. The rule that the acts of a conspirator are admissible against a coconspirator, if in pursuance of the conspiracy, provided there is proof of a conspiracy, seems to me to have no application to the action of such third parties.

I do not discuss now, because I do not represent Soft-Lite, the question whether those matters may be admissible against Soft-Lite alone on some separate claim by the Government here that in the operation of this distribution system there was in a sense a separate violation. What the Government is charging here is a conspiracy between Bausch & Lomb and Soft-Lite. It does not charge that the wholesalers are parties to that conspiracy. Therefore no letter by a third party not an employee of Soft-Lite could be admitted as the act of a coconspirator or an act taken pursuant to the conspiracy. Therefore I say that the letter of the X Company, an independent wholesaler, for the purpose of this discussion, could not be admitted against Bausch & Lomb, even were there the predicate of proof of an unlawful conspiracy, because it is not an act of a conspirator in pursuance of the conspiracy.

It is the act of a third party over whom Bausch & Lomb had
238 no control whatever, even on the theory that it had control over a coconspirator, which I assume is the basis of the rule on which such evidence can be admitted.

So I say those letters cannot be admitted against Bausch & Lomb, and they ought not to be admitted even subject to connection, because if they are then we have the additional burden in this case of studying the record to see whether the acts of these third parties have been connected. It seems to me that the most that should be done is to admit them against Soft-Lite subject to motion by the Government to extend them to somebody else if there is a connection. Because I do not think we ought to have this record full of matters that are to be connected. Your Honor is familiar with the rule that Judge Caffey applied in the Aluminum case, where he indicated that the practice was not to burden the Court and counsel by taking matters which are not admissible and putting the burden upon the Government to connect them.

That is all I have to say on the general question. I would have more to say if we were treating this as a special question, in view of the affiliation.

The COURT. You can postpone that, because my disposition is to treat it now as simply a communication from a wholesaler, and without regard to its affiliation with Bausch & Lomb. It
239 we find that we cannot act on that basis, then we will consider the other.

Mr. ISSEKS. Your Honor, I think I may be repeating what your Honor has said, but we charge here that Bausch & Lomb and Soft-Lite conspired, one, to contract for the exclusive arrangement between Bausch & Lomb and Soft-Lite, and, two, to work out an arrangement for the distribution system, which we have set forth in our complaint and our brief? We will show at the appropriate time that Bausch & Lomb and the Soft-Lite Lens Company conspired for all purposes, including price-fixing down the line, all the way down. We say the acts of any wholesaler who benefited by this conspiracy are acts which can be proven against both Soft-Lite and Bausch & Lomb. I, too, unless your Honor insists otherwise, would prefer not to argue the other point, that if your Honor rules against us we would have to urge that the affiliates are acting on behalf of Bausch & Lomb. I do not think I have to go that far.

The COURT. No; I think you can if you wish. But let me indicate the basis on which I propose to admit this letter—and it is distinct from the one suggested by Mr. Isseks. It seems to me there has been charged in this complaint a conspiracy between Bausch & Lomb and Soft-Lite in restraint of trade through the establishment of a certain system of distribution. What
240 you say generally about the acts of third persons not being binding, even when the conspiracy is established, is of course true. But I do not receive the letter on that basis at all. In other words, this proposed Exhibit 68 is not received in evidence as evidence of what the Riggs Optical Company did. It is simply offered in evidence as a communication received by the defendant, as a stimulus, to see now what action that stimulus produced. The fact to be proved is what action was taken by the defendant Soft-Lite in response to such a stimulation.

In other words, it does not make any difference whether the Riggs Optical Company is a member of the conspiracy either directly or by any form of agency. A communication was received by Soft-Lite. What did Soft-Lite do with that communication? The action of Soft-Lite tends to indicate or prove what the system of distribution was, and if that system was in violation of the sections of the Sherman Act it is relevant. It might be an anonymous communication received by the defendant which said "One of your customers does not maintain prices of licensed merchandise." What does Soft-Lite do when it receives such a stimu-

lation? If the answer is that they then terminate the license of that person, that shows a system of policing their system of distribution, which is relevant to the issues of this case.

241 It is utterly unimportant at this point whether Riggs Optical Company is an affiliate of Bausch & Lomb, whether it is a wholesaler or whether it is a nonexisting entity.

Mr. SEYMOUR. I understand that so far as any further question is concerned, that is any question arising out of the affiliate question, your Honor does not dispose of that question now.

The COURT. No.

Mr. SEYMOUR. And is not ruling on it, because counsel does not even offer it on that basis.

The COURT. I am receiving this letter on the same basis an anonymous communication received by the defendant would be taken. It may very well be that as the case proceeds it will be demonstrated, though I do not know that it will, that the Riggs Optical Company is the alter ego of Bausch & Lomb, or that it is Bausch & Lomb, or that it was the designated agent of Bausch & Lomb, in writing this letter. I do not know what will be proved, and I do not propose to guess. Then of course this letter might be admissible on additional grounds.

Mr. SEYMOUR. Yes.

The COURT. That is not the basis on which it is being received at this time.

242 Mr. SEYMOUR. In that event we will have an opportunity to present our objections to its receipt on any broader ground.

The COURT. You are right.

Mr. SEYMOUR. In view of the fact that Mr. Isseks says he is going to offer a number of these, may it be understood that this objection and your Honor's ruling apply to all letters in this category?

The COURT. Yes. Objection overruled; you may have an exception, and it is received.

(Marked "Government's Exhibit 68.")

Mr. ISSEKS. So there will be no misunderstanding, your Honor, I serve notice on counsel that at the appropriate time we will offer all these documents written by the Bausch & Lomb affiliates, as evidence against Bausch & Lomb, as well as other direct evidence. At this time, your Honor, I offer the Act which your Honor said you are letting that in for at this particular time. I offer the Act, which is the notice of April 1, 1939, to the wholesalers. I particularly call your Honor's attention that reference is made to the last exhibit in the notice.

(Marked "Government's Exhibit 69.")

Mr. ISSEKS. I now offer a letter dated February 28, 1940, written on the stationery of the Riggs Optical Company, Chi-
243 cago, Illinois, addressed to Soft-Lite Lens Company signed Riggs Optical Company, M. Onsgard.

(Marked "Government's Exhibit 70.")

Mr. ISSEKS. In connection with Government's Exhibit 70 I direct your Honor's attention to Government's Exhibit 60–E, which is a notice of removal since January 1, 1940, and point out that under the registered dispensing licensees removed since January 1, 1940, the eighth name is J. W. Garrity, O. D., Chicago, Illinois.

The COURT. I also call your attention that on the face of Exhibit 70 it says: "Plaque removed. Notice sent February 29, 1940."

Mr. ISSEKS. Thank you, sir. I did not have a formal copy of the notice, so I did not offer it. I now offer in evidence a letter dated August 10, 1939, addressed to the Soft-Lite Lens Company, on the stationery of the Colonial Optical Company, signed L. Leitch.

(Marked "Government's Exhibit 71.")

Mr. ISSEKS. I offer the notice of removal that went to the wholesalers—letter dated August 21, 1939.

The COURT. Let me ask you, to save time, is there any question but that the gentleman referred to in Exhibit 71 was removed?

Mr. ISSEKS. I have a notice of removal here.

The COURT. It may be cumulative.

244 Mr. LEHRICH. In all these cases I furnished the correspondence with the notice of removal.

The COURT. We have 71 exhibits and there will be 710 before we finish, so I would like to avoid any unnecessary evidence. There is no question that the customer, the licensee in Exhibit 71, was removed by the usual method.

Mr. ISSEKS. On August 21, 1939. I would like to have the date.

The COURT. On August 21, 1939. Very well.

Mr. LEHRICH. I am assuming that the only ones you are offering are those on removals; because you have some correspondence where there were rejections because they did not follow the recommendations.

The COURT. Mr. Lehrich, I assume that you will try to show in defense, if it gets to a defense, that these recommendations were not always followed?

Mr. LEHRICH. Except that Mr. Seymour calls my attention to the fact that your Honor might construe my last stipulation to mean that any letter indicating a recommendation was followed by a removal.

The COURT. No. I will ask that same question with respect to each one that he offers.

Mr. ISSEKS. I always intended to offer the record of removal. If I have not got it here it is because we have been derelict,
245 but that has been our purpose. I now offer a photostat of a card, and I will see if the witness can help me identify the card. Or perhaps I better ask counsel whether this card is the form card used by the Soft-Lite Lens Company in connection with recommendations or recording of matters relating to retail licensees.

Mr. LEHRICH. That is the salesmen's call report.

Mr. ISSEKS. I offer this salesman's call report with regard to E. L. Egolf at Harrisburg, Pennsylvania.

(Marked "Government's Exhibit 72.")

Mr. ISSEKS. Your Honor, I would like to offer as the next Government's exhibit——

The COURT. Just a minute. Was that gentleman removed?

Mr. ISSEKS. Your Honor, the next removal notice has something on it which does not appear anywhere else.

The COURT. That is sufficient. If you call my attention to the fact that they were removed.

Mr. ISSEKS. Yes; and they were removed on March 25, 1940. There is a notation I would like to read. The notification refers to two people, this gentleman Egolf and somebody else. Then there is a notation which I would like to offer in evidence. It is as follows: "McIntyre says O. K. on both of these. See letter 3/22/40."

The COURT. What are you now reading from?

246 Mr. ISSEKS. You haven't got that.

The COURT. An office memorandum of one of these removal notices?

Mr. ISSEKS. That is right. I now offer as the next Government exhibit a letter dated January 31, 1940, addressed to Mr. Landis, signed Riggs Optical Company, A. R. Schrader. This is a copy apparently on the stationery of Riggs Optical Company, and relates to the Vision Inc., in Houston, Texas.

(Marked "Government's Exhibit 73.")

The COURT. Was that gentleman cancelled?

Mr. ISSEKS. Yes, sir; on February 5, 1940. According to the notice we have here.

The COURT. There is no dispute about that, is there, Mr. Lehrich?

Mr. LEHRICH. If Mr. Isseks has checked that.

The COURT. You accept it?

Mr. LEHRICH. Yes.

The COURT. In other words, I want you to understand I am dispensing with the proof of these cancellations on your statement.

Mr. LEHRICH. I have not been following these; I do not have a list in front of me. If Mr. Isseks says he has the removal notice I furnished him, I accept that.

247 Mr. ISSEKS. I also make the offer subject to any correction counsel wants to make at any time before your Honor takes the case. If I have been misled or misinformed I certainly want the record corrected first before your Honor takes it. Your Honor, I have some cards which I understand are permanent record cards of these licensees. These are photostats, and if counsel agrees I will offer those and return the originals. I am going to offer photostats of these cards.

The COURT. Tell me first whose cards they are.

Mr. ISSEKS. Soft-Lite Lens Company.

The COURT. Taken from the files of Soft-Lite Lens Company?

Mr. ISSEKS. Yes, sir; they furnished them to us pursuant to interrogatories. They show the name of the licensee, where he is located. They show who submitted him, the name of the company; and they also show the cancellation, who recommended it and why. And there is a group of cards here. I am perfectly willing, your Honor, if you do not want to encumber the record, without offering one to just read in what transpired, but as far as I am concerned we will do it either way.

The COURT. How many are there?

Mr. ISSEKS. I have 25 or 30, though I have six or seven in my hand.

248 The COURT. Which will take less time?

Mr. LEHRICH. I would rather have Mr. Isseks offer all of these, because there is such a volume of them it would be difficult to trace them back through the record.

Mr. ISSEKS. I think I had better put them in, your Honor.

The COURT. Yes; it would take longer to read them?

Mr. ISSEKS. The first one relates to J. M. Moe, of Canton, South Dakota. I offer that.

The COURT. Can't you offer them as Exhibits 74 and then 74–A, B, C, etc.?

Mr. ISSEKS. Yes. Exhibit 74 will be the one of Dr. Moe. It is a form. The rest will be easy. You will only have to look in one place.

(Marked "Government's Exhibit 74.")

Mr. SEYMOUR. I have never seen these before, and I do not know whether this is typical or whether Mr. Isseks has just chosen those which might help his case as much as possible.

Mr. ISSEKS. I do not agree to that. I have shown what I think are typical instances, for different reasons.

The COURT. I think he will do the job honorably, but choose those which he thinks will help win his case.

249 Mr. SEYMOUR. Of course, but I want to know in my argument on this. Because we are talking about one instance, and here we have a photostat of a card containing a clerical entry, which is a clerical interpretation perhaps of another document offered in this case against Bausch & Lomb. This falls into a different category perhaps than what we have been talking about. Insofar as Soft-Lite or its officers are concerned this may be admissible. It is not the entry of a third person, therefore it does not fall into the category of those we have just been talking about.

The COURT. That is right.

Mr. SEYMOUR. It is the entry of Soft-Lite, and it is his interpretation of other documents. I submit that our clients are not bound by that interpretation. This is not an act pursuant to the conspiracy. This is an interoffice record. It may be admissible, and undoubtedly is, against Soft-Lite, but I submit it is not admissible against our clients—even without raising any question that this was actually made by a Soft-Lite employee, and I do not raise any such question.

The COURT. Let us see how much we do agree on. It is agreed that this was made by a Soft-Lite employee; there is no dispute about that?

250 Mr. SEYMOUR. That is right.

The COURT. It is agreed that this was done in the regular course of business?

Mr. SEYMOUR. Yes. I am accepting counsel's statement on all of that. I am not challenging it.

The COURT. Under those circumstances I will receive it, and if you want to show that in any particular case this record is an erroneous construction of the documents on which it is based, that is your privilege. In the absence of that I will receive it, and I will receive it against Bausch & Lomb subject to the reservation generally made. But if the conspiracy is established I want you to know now that my disposition is to receive it as against Bausch & Lomb, if that connecting link is forged.

Mr. SEYMOUR. The difficulty that I see in this—and I do not know what the documents interpreted here are—is that this is in effect an offer by the Government of a substitute for oral testimony construing apparently another written instrument which is not in turn offered. The Government is offering this to show what the fact was, not to show there were some cards. In this particular case somebody at Soft-Lite entered the words "cutting prices."

The COURT. No; he is not offering it for that. He is offering it to show that Soft-Lite for price cutting did eliminate a cer-
251 tain licensee. It is not to show that somebody did write that.

Mr. ISSEKS. No; that is right.

The COURT. It is more substantial. Assuming that he had the witness on the stand and asked if he eliminated licensees for price cutting, and the witness said no, he would offer the document and it would go in evidence.

Mr. SEYMOUR. As I read the one card that I saw, and which I now have before me—has your Honor got a copy of it?

The COURT. I have one which is entitled "J. H. Moe, O. D., Canton, South Dakota."

Mr. SEYMOUR. Yes; and you will note "Cancellation recommended by"—I cannot read who he is.

Mr. ISSEKS. Riggs.

Mr. SEYMOUR. It does not look like that to me.

Mr. ISSEKS. "Rgs" for Riggs—an abbreviation.

Mr. SEYMOUR. Then a date, and then "cutting prices."

The COURT. That is right.

Mr. SEYMOUR. Isn't it pretty apparent from this that what it is is an interpretation of the basis of the recommendation?

The COURT. Certainly, but that is an office record of the
252 defendant Soft-Lite. This is the defendant Soft-Lite that says they excluded him, for cutting prices; and, being a corporation, it presumably acts through agents and employees. Therefore, it being admitted this was done by an employee or agent of the company in the regular course of business, it is admissible as an admission against that defendant, as a record of the company.

Mr. SEYMOUR. I submit it is not admissible against our clients, and I object on that ground.

The COURT. Not unless the link in the conspiracy is established.

Mr. SEYMOUR. Aside from that, and in addition to that, I submit it is inadmissible and it is incompetent, irrelevant, and immaterial against our clients, because of the nature of the entry offered. I am not challenging the fact that it was done in the regular course of business.

The COURT. That objection is overruled.

Mr. SEYMOUR. Exception.

(Recess to 2:15 p. m.)

253 AFTERNOON SESSION

NATHANIEL SINGER, resumed the stand.

Direct examination continued by Mr. ISSEKS:

Mr. ISSEKS. Your Honor, in Government's Exhibit 74, there is a reference to a letter that I interpret to be a Riggs letter of March 6,

1939. If counsel for either one of the corporate defendants can locate the file copy of the letter, we would like to have it. I understand, and I can be corrected if I am mistaken, that as of a certain date Soft-Lite has no correspondence prior to that time because in the regular course of business they eliminate files, but I understand this date is prior to April 7, 1939, so if they can locate that letter I would like to have it. Now I would like to offer some more of these, your Honor.

The COURT. They are all of a kind?

Mr. ISSEKS. Yes, sir.

The COURT. Why don't you just offer them in succession as a series?

Mr. ISSEKS. I will. The first one relates to the Professional Optical Company at Detroit, Michigan.

The COURT. Do you need to identify them that way?

Mr. ISSEKS. I think we ought at least to have the name of the outfit.

254 (Marked "Government's Exhibit 74–A.")

Mr. ISSEKS. The next one is J. Namias, of Fall River, Massachusetts.

(Marked "Government's Exhibit 74–B.")

Mr. ISSEKS. The next one is E. Wagner, Buffalo, New York.

(Marked "Government's Exhibit 74–C.")

Mr. ISSEKS. The next one is Strawbridge & Clothier, Philadelphia, Pennsylvania.

(Marked "Government's Exhibit 74–D.")

Mr. ISSEKS. The next one is L. R. Olmsted, of Brownsville, Texas.

(Marked "Government's Exhibit 74–E.")

Mr. ISSEKS. The next one is J. G. Eganhouse, of Houston, Texas.

(Marked "Government's Exhibit 74–F.")

Mr. ISSEKS. The next one is Joseph Wilson of Long Beach, California.

(Marked "Government's Exhibit 74–G.")

Mr. ISSEKS. The next one is Dr. S. Bronow, of Los Angeles, California.

(Marked "Government's Exhibit 74–H.")

Mr. ISSEKS. Your Honor, that group that I have offered all relate to one classification, namely, unethical practice or price-

255 cutting, and I would like, in addition to those, to offer what counsel has designated as a "call report." That piece of paper refers to a Dr. Weinberger of Philadelphia, Pennsylvania, and was attached to the office record which I am not offering. This call report relates to Dr. Weinberger, and was made apparently by the gentleman whose initials are F. B. S. I would like to ask the witness what his full name is.

The WITNESS. Scheinbloom.

Mr. ISSEKS. And I offer this call report as the next Government exhibit.

The COURT. It is a report by a salesman working for the Soft-Lite Company?

Mr. ISSEKS. Soft-Lite Company. The record itself has some reference to the report but it is obliterated on the photostat and I do not care because the call report itself is rather detailed.

(Marked "Government's Exhibit 74–I.")

Mr. ISSEKS. I have another one in the same category. This is not a call report but this is a regular record. This is Dr. Helman, of Wilkinsburg, Pennsylvania.

(Marked "Government's Exhibit 74–J.")

The COURT. With respect to Exhibits 74–I and J, have those licensees had their licenses cancelled?

256 Mr. ISSEKS. It is my understanding, your Honor, that in every case the license is cancelled.

The COURT. That is not disputed, subject to correction?

Mr. LEHRICH. Subject to correction.

Mr. ISSEKS. I do not know whether your Honor has had an opportunity to look at them all or not, but they are all in the same category. Now I would like to offer some relating to taking people off, at least one, who is a price advertiser, and in that connection I offer the letter of August 25, 1939, addressed to R. G. Landis, signed Riggs Optical Company, A. R. Schrader.

(Marked "Government's Exhibit 75.")

Mr. ISSEKS. And I offer the reply of Mr. Landis to Mr. Schrader, dated August 28, 1939.

(Marked "Government's Exhibit 76.")

Mr. ISSEKS. Your Honor, in that case there is a record showing that the license of Mr. Caffey of Hamilton, Texas, was removed on August 20, 1939. I ought to point out that in the case of the cards, the date when the license is cancelled is shown right on them, and now I would like to offer an instance where the license was removed because the licensee was connected with chain jewelry and was a price advertiser. This is the company record of E. Calmar Adams of Baltimore, Maryland.

257 (Marked "Government's Exhibit 77.")

Mr. ISSEKS. I also have another one of Kendrick & Lindblad, of Aurora, Illinois, cancelled "for price advertising, etc."

(Marked "Government's Exhibit 77–A.")

Mr. SEYMOUR. I assume it is understood that that objection I made before recess, and which your Honor overruled, applies.

The COURT. Yes.

Mr. ISSEKS. I would like to offer too, these company records showing removal because they were using some other type of

tinted lens. The first one is Anthony Russo of New Orleans, Louisiana.

(Marked "Government's Exhibit 77-B.")

Mr. Isseks. I have another one here, of F. T. Ruppert, of Anthony, Kansas. As I read it, "using some other kind of tinted lens," and "sends his work to the"—the company mentioned yesterday by the witness, Barnett & Ramel.

(Marked "Government's Exhibit 77-C.")

The Court. In Exhibit 77-B, the card I have shows not that he uses another kind of lens, as you stated it, but I think you intended to express the thought, but he "uses Continental lenses and Nulites almost exclusively and only interested in Soft-Lite for convenience."

258 Mr. Isseks. Yes; I am sorry.

Q. Continental put out a tinted lens, did they not, in 1938?—A. Yes, sir.

Mr. Isseks. I am sorry I misinterpreted. I may be wrong.

The Court. I think it means he used a competing lens.

Mr. Isseks. That is right.

The Court. But the reason I mention it is that I want to call attention to the word "exclusively."

Mr. Isseks. I see. Now I have one of these call reports here, showing a removal for another reason and I should like to ask a question before I offer it.

Q. Loxit product was put out by whom?—A. That is a frame put out by Bausch & Lomb Optical Company.

Mr. Isseks. I now offer one of these call reports referring to a Herman Klein at Harrisburg, Pennsylvania. The report was made by one F. B. I will ask who he is.

The Witness. Ferdie Bernard, one of our salesmen.

Mr. Isseks. I offer this removal, showing because this person was already removed from the Loxit list and because someone refuses to sell him a Perfect product.

Q. Who is Mr. Imbrie, do you know?—A. I do not know,

259 sir.

Q. Maybe you can help me out. There is a reference here to Hymie. Who is Hymie?—A. So far as I know, we have no Hymie in our organization.

Q. Is it anybody, as far as you know, connected with McIntyre, Magee & Brown?—A. May I read it a minute?

Q. Yes. That is McIntyre, I am sorry.—A. That is McIntyre. His salesmen have nothing to do with us.

Mr. Isseks. I am afraid the Court will have to come to that conclusion.

The Court. You might let the document speak for itself.

Mr. ISSEKS. I could not read it. The witness read it for me. He says "McIntyre" and I will take that. I think "McIntyre" is spelled a little different there, and there is a word I understood to be "Imbrie," but the witness says it is McIntyre.

Mr. LEHRICH. May I make the suggestion that as to all these documents as they are going in, that we leave out Mr. Issek's interpretation of what they say.

The COURT. I suggested as much a moment ago, and I accept your suggestion. I think it would be in order if you put them in without commenting, and reserve your right to comment when we sum up.

(Marked "Government's Exhibit 78.")

260 Q. Mr. Singer, the Southeastern Optical Company is an affiliate of Bausch & Lomb, too, isn't it?—A. It is.

Q. Did you have someone connected with your company by the name of Summers, in 1939?—A. Yes, sir.

Q. Who is he?—A. He is one of our salesmen.

Mr. ISSEKS. At this time I offer several documents relating to the removal of Swenson & Pearson as prescription licensees, one dated April 27, 1939, addressed to E. T. Summers, care of Bausch & Lomb Optical Company, Chicago, Illinois, signed apparently by Mr. Landis.

(Marked "Government's Exhibit 79.")

Mr. ISSEKS. I would like to call your Honor's attention to a paragraph here. I assume your Honor's direction does not apply——

The COURT. Let me just read it. Have you asked any questions about Exhibit 79?

Mr. ISSEKS. I will ask the questions right now.

The COURT. I would like to know who Mr. Summers was.

Mr. ISSEKS. I think the witness testified he was an employe or salesman of the Soft-Lite.

The WITNESS. Is that Ed T. Summers?

Mr. ISSEKS. Yes, sir.

The WITNESS. Yes, sir.

261 The COURT. Why is it being addressed to the Bausch & Lomb people?

The WITNESS. We have no office excepting in New York City and we will address mail to a salesman in care of one of our wholesalers or Bausch & Lomb, or wherever he may want to pick it up.

By Mr. ISSEKS:

Q. Mr. Singer, was your company in 1939 trying to find out from what source the Reliable Optical Stores of Lynchburg, Virginia, were obtaining Soft-Lite lenses?—A. I do not know, sir.

Q. See if I can help you out. I show you Government's Exhibit 79, and the second full paragraph reads——

The COURT. The witness will read it himself.

The WITNESS. Thank you.

A. This is the first time I saw it.

Q. Never knew about it before?—A. No, sir. Mr. Isseks, I am acquainted with the policy of the business and I helped make it a better way, but I am not acquainted with the specific details. We have other people who take care of that.

Q. Were you informed at the time who did this shopping referred to in this letter?—A. No, sir. No part of that.

Q. Was it called to your attention that the shopping was done by the Southeastern Optical Company?

262 Mr. LEHRICH. Wait a minute. The question at first was, was it called to his attention who did the shopping, and the witness says "no," and then he says "Was it called to his attention it was done by the Southeastern Optical Company?"

The COURT. Well, this witness being a hostile witness the attorney is entitled to press him a little within reason.

Mr. LEHRICH. Then I object to the question on the ground that there is such an assumption in it.

The COURT. In view of the fact that the letter is in evidence and shows that assumption, your objection is overruled.

Q. (Question read.) A. The first time I heard of this case is right now,

Q. You mean this instant.—A. This case, this particular——

The Court. Situation.

The WITNESS. Situation right now. I do not handle the details.

Mr. ISSEKS. I offer copy of a letter dated May 4, 1939, addressed to the Southeastern Optical Company, one Mr. S. R. Clayman, signed "Soft-Lite Lens Company. R. G. Landis," with a copy for your Honor.

(Marked "Government's Exhibit 80.")

263 Mr. ISSEKS. Your Honor, I have been furnished with a notice of removal for Swenson & Pearson, which has no date, and has no indication on the left hand side to whom it went and no indication on the right hand side as to the reason for the removal, and we would like, if possible, to receive the removal notice with all the notations thereon that appear on the other notices in the files of the Soft-Lite Company.

264 I am sorry, your Honor, I was reading the other document. We have been given by counsel for Soft-Lite copies of these removal notices on a form showing on the lefthand side the various wholesalers, and the reason, and on the righthand side the dates.

The COURT. I see it. You made that statement a moment ago. Though I was reading the letter I heard you. I assume counsel has not got that here now, or is not prepared to produce it now.

Mr. LEHRICH. I am not prepared to do that now, but everything that we had we turned over to them. I have no objection.

The COURT. These requests are put on the record and I assume you will take notice of them and comply if you can within a reasonable time. You may want to go back to your office and check on it.

Mr. ISSEKS. I now offer another instance of a removal because of furnishing someone apparently unauthorized. This is what I understand to be the record of various——

Mr. LEHRICH. Your Honor, I object again to the comments.

The COURT. I will entertain a motion to strike it out. Offer your documents and they will be received or excluded, and will be marked or not. Then let the documents speak for themselves. Of course argument will be made on the record at the proper time.

Mr. ISSEKS. I will go about it a little differently.

The COURT. The introduction of testimony through counsel certainly would not be tolerated if a jury were here, and I have allowed it because it really does not make very much difference. But I think the objection is well taken.

Mr. ISSEKS. I think I will go back to the last one.

The COURT. To No. 80?

Mr. ISSEKS. In connection with the Swenson-Peterson. I now offer what apparently is an inter-company communication, dated May 4, 1939, addressed to G. D., signed R. G. L. I only have one copy here that is fairly legible.

(Marked "Government's Exhibit 81.")

Mr. ISSEKS. I now offer in evidence a letter dated November 13, 1939, on the stationery of Colonial Optical Company, Boston, addressed to the Soft-Lite Lens Company, signed Colonial Optical Company, Inc., L. Leitch.

Mr. LEHRICH. Mr. Isseks, on the last exhibit shown to me, of May 4, 1939, there is a notation at the bottom "Plate destroyed. No. 1."

Mr. ISSEKS. That is on ours, too; yes. I think it is. Yes; here it is.

Mr. LEHRICH. I thought it might be a photographic plate.

Mr. ISSEKS. I will ask the witness if he knows.

By Mr. ISSEKS:

Q. Do you know what "Plate destroyed" means?

The COURT. I have seen that on a number of them. I suppose it is the plate that goes into the mailing machine.

Mr. LEHRICH. I understand that it is the addressograph plate.

The COURT. Yes.

Mr. ISSEKS. I have offered this letter of November 13, 1939.

(Marked "Government's Exhibit 82.")

Mr. ISSEKS. I now offer the reply, dated November 15, 1939, addressed to M. Leitch, signed Soft-Lite Lens Company.

(Marked "Government's Exhibit 83.")

The COURT. Why is it necessary to offer this?

Mr. ISSEKS. There is a series of correspondence here with regard to the same company, and there are two more on it, one coming from Soft-Lite to Mr. Leitch.

The COURT. All right, I suppose it is necessary to follow the contents of the next one. But all this one says is "We got your letter and are holding it."

267 Mr. ISSEKS. This follows it up. This is dated November 21, 1939, to Mr. Leitch, from Soft-Lite Lens Company, R. Landis.

(Marked "Government's Exhibit 84.")

Mr. ISSEKS. I now offer an inter-company communication which bears the date 11/29, addressed to G. D., siged R. G. L.

(Marked "Government's Exhibit 85.")

Mr. ISSEKS. Your Honor, I have two pieces of paper here. One indicates that the license was cancelled on November 28th, and the other indicates that it was cancelled on December 6th. I think it is unimportant, except the cancellation notice itself indicates it was December 6, 1939.

The COURT. With respect to Exhibit 85 what evidence have you that this little note refers to the same case?

Mr. ISSEKS. Because it was given to us as their file, your Honor.

The COURT. I see.

Mr. ISSEKS. Your Honor, the next situation—without trying to characterize it, I would like to offer the notice of cancellation, that is the Soft-Lite Lens Company copy, because there is a notation thereon which does not appear in either the record or

268 the report, and that is the only way that we can get into the record the reasons for the cancellation. I have a copy here and it is dated June 23, 1939. It goes to a group of licensees on the lefthand side, and gives the reason for cancellation right in the body of the notice.

(Marked "Government's Exhibit 86.")

Mr. ISSEKS. Your Honor, I would like to make an offer of proof with regard to a whole group here. In view of your Honor's admonition I do not want to make any statement, but I wonder if I could ask the witness a question.

The COURT. Ask the witness all the questions you wish.

By Mr. ISSEKS:

Q. Does your company cancel licenses of retailers because they were connected in some way with a jewelry store?—A. We have no general rule of that order.

Q. You do not?—A. No general rule; no.

Q. Do you know whether licenses were cancelled because they were connected with jewelry companies?—A. No, that would not be a factor. Some of our best customers are jewelers.

Mr. ISSEKS. Your Honor, I am offering a group here for the truth of the matter asserted therein and to contradict the
269 witness. One constitutes a call report in connection with L. S. Grossman, made by the same gentleman that the witness identified before.

Mr. LEHRICH. If your Honor please, I think counsel has been admonished several times not to read the contents of a paper that he is offering.

The COURT. He does no more than identify the document for the reporter, and that is all he should do.

Mr. ISSEKS That is all I am doing.

The COURT. You can call it a report, a call report, salesman's report. They do not object to that.

Mr. ISSEKS. And identify whom it refers to. Mr. Grossman is a licensee, and there are the initials F. B. S. The witness identified who that was.

Q. Who was it?—A. Mr. Scheinbloom.

Mr. ISSEKS. I offer this one in evidence.

(Marked "Government's Exhibit 87.")

Mr. SEYMOUR. This is a somewhat different type of record, though we have had several of these before. I assume your Honor's ruling would be the same on the same objection. I think I may consider that a continuing objection to this, may I not?

The COURT. This is a report by a salesman or field representative?

Mr. ISSEKS. That is right, sir.

The COURT. And he recommends cancellation, and
270 the license was subsequently cancelled.

Mr. ISSEKS. That is my understanding. I have a notice here that shows the date of cancellation. But in view of your Honor's ruling about trying to keep the record down, I will state it was cancelled January 31, 1940.

Mr. SEYMOUR. I have the same objection to this line as before.

The COURT. That is right. Overruled.

Mr. ISSEKS. I now offer the business record, as distinguished from the call report, of the Soft-Lite Company, in connection with one A. M. Reider of Albany, Georgia.

(Marked "Government's Exhibit 88.")

Mr. Isseks. I offer the next one, of similar character. L. S. Grossman, Philadelphia, Pa.

(Marked "Government's Exhibit 88–A.")

Mr. Isseks. I offer as Exhibit 88–B one in respect of A. L. Levi, Philadelphia, Pennsylvania.

(Marked "Government's Exhibit 88–B.")

Mr. Isseks. I offer one in respect of C. V. Morley, Glendale, California.

(Marked "Government's Exhibit 88–C.")

Mr. Isseks. I offer one in respect of J. Leon Hosking, Los Angeles, California.

(Marked "Government's Exhibit 88–D.")

271 Mr. Isseks. I offer one in respect of C. C. Tankel, Minneapolis, Minnesota.

(Marked "Government's Exhibit 88–F.")

Mr. Isseks. I offer one in respect of Leon H. Kay, Detroit, Michigan.

(Marked "Government's Exhibit 88–F.")

Mr. Isseks. Also one regarding Dr. P. Krauss, Lafayette, Louisiana.

(Marked "Government's Exhibit 88–G.")

By Mr. Isseks:

Q. Mr. Singer, did your company take off retail licenses from your regular list because they were working for a department store?—A. That would not be a criterion.

Q. It would not?—A. No.

Mr. Isseks. I offer a letter dated January 24, 1939, addressed to the Bausch & Lomb Optical Company, Panoptik Company, Soft-Lite Lens Company, "Gentle," signed Riggs Optical Company, M. Onsgard, furnished to us by the Soft-Lite Lens Company.

Mr. Seymour. I would like to see that.

The Court. This Bausch & Lomb Optical Company at the top is just the same as the defendant in this action?

Mr. Isseks. As far as I know, your Honor.

Mr. Seymour. Yes; I have no doubt it is.

The Court. I mean it is not a subsidiary of the

272 same name that was organized in another state?

Mr. Seymour. No.

Mr. Isseks. Your Honor remembers the stipulation by counsel yesterday that Panoptik is a wholly-owned subsidiary.

The Court. I understand that, but I wanted to be sure of its identification.

(Marked "Government's Exhibit 89.")

Mr. Isseks. According to the notice we have here that license of L. A. Slawney was removed by the Soft-Lite Lens Company on February 1, 1939.

Q. Was it the policy of your company to take off a retail licensee who was removed by the Panoptik Company as a licensee?—A. That would not be a criterion.

Q. Was it the policy of your company to take off one from your retail licensee list who was taken off any Orthogon license?—A. No.

Q. Who is Mr. Truex, sir?—A. Mr. Truex?

Q. Yes, T-r-u-e-x, or T-r-u-a-x.—A. T-r-u-e-x. He used to be a salesman of ours some years ago.

Q. Worked out on the West Coast, did he not?—A. Yes.

Mr. Isseks. I now offer a letter dated March 8, 1939, addressed to Mr. Dean Truex, Corey Hotel, Denver, Colorado, signed Riggs Optical Company, Nick Stevens. Your Honor, in view of
273 the questions heretofore raised by your Honor, I would like to also offer as the next exhibit the notice of cancellation dated March 13, 1939, going to the wholesalers, regarding the J. H. Burgess referred to in the previous letter, and direct your Honor's attention to a notation thereon which indicates that one was the result of the other.

(Marked "Government's Exhibits 90 and 90-A.")

Q. Was it the policy of your company, Mr. Singer, to remove as licensees of Soft-Lite those that the Riggs Optical Company considered undesirable?—A. No.

Mr. Isseks. Your Honor, at this time I offer as a group 25. That is subject to correction, because I may be wrong, but I think there are 25. I am going to list them at one time, and having in mind your Honor's admonition I would like to direct your Honor's attention to who recommended it, the letter of recomendation referred to, and the reason, in each case, and I call your Honor's attention to the fact that the letter comes from one source, the recommendation is made by one source, the same letter in each case, under date March 31, 1938, and the reason in every case but one or two is identical. I would like to just read them off.

The Court. You will not offer the documents themselves?
274 Mr. Isseks. Yes, I will, but I thought I would like to call that to your Honor's attention. They all refer to the same letter, and of course there are 25 different people. I will have a set for your Honor and a set for counsel as soon as my associate can assemble the papers. I would like to have them in series. The first one is R. W. Miller, Chicago, Illinois.

(Marked "Government's Exhibit 91.")

Mr. Isseks. W. L. Murray, Chicago, Illinois.

(Marked "Government's Exhibit 91-A.")

Mr. Isseks. J. E. Maurer, Chicago, Illinois.
(Marked "Government's Exhibit 91–B.")
Mr. Isseks. Dr. Carl Maggio, Chicago, Illinois.
(Marked "Government's Exhibit 91–C.")
Mr. Isseks. Frank T. Loedige, Chicago, Illinois.
(Marked "Government's Exhibit 91–D.")
Mr. Isseks. W. F. Lehmann, Chicago, Illinois.
(Marked "Government's Exhibit, 91–E.")
Mr. Isseks. A. F. Laity, Chicago, Illinois.
(Marked "Government's Exhibit 91–F.")
Mr. Isseks. E. N. Klein, Chicago, Illinois.
(Marked "Government's Exhibit, 91–G.")
Mr. Isseks. V. B. Dixson, Chicago, Illinois.
(Marked "Government's Exhibit 91–H.")
Mr. Isseks. Damen Drug & Optical Company, Chicago, Illinois.
275 (Marked "Government's Exhibit 91–I.")
Mr. Isseks. H. R. Cox, Chicago, Illinois.
(Marked "Government's Exhibit 91–J.")
Mr. Isseks. Dr. Ernest R. Bronson, Chicago, Illinois.
(Marked "Government's Exhibit 91–K.")
Mr. Isseks. H. R. Berns, Chicago, Illinois.
(Marked "Government's Exhibit 91–L.")
Mr. Isseks. Dr. Bergson & Company, Chicago, Illinois.
(Marked "Government's Exhibit 91–M.")
Mr. Isseks. Dr. Clinton C. Bailey. I wish to call your Honor's attention in that case to the fact that apparently—and again I have in mind your Honor's admonition, but some of these things are unintelligible without explanation—at some subsequent date to the date of the cancellation the license was restored. Because that is the way I read the record.
(Marked "Government's Exhibit 91–N.")
Mr. Isseks. V. A. Greene. I make the same comment for that one as I made for the last one.
(Marked "Government's Exhibit 91–O.")
Mr. Isseks. O. C. Brunais, Chicago, Illinois.
(Marked "Government's Exhibit 91–P.")
Mr. Isseks. C. D. Crawford, Chicago, Illinois.
(Marked "Government's Exhibit 91–Q.")
276 Mr. Isseks. Carl E. Oleson, Evanston, Illinois. In that case, your Honor, it shows right on its face that it was reinstated at some subsequent date.
(Marked "Government's Exhibit 91–R.")
Mr. Isseks. H. Wilansky, Chicago, Illinois.
(Marked "Government's Exhibit 91–S.")

Mr. ISSEKS. Sidney Shapiro, Chicago. Illinois.
(Marked "Government's Exhibit 91–T.")
Mr. ISSEKS. W. A. Dreher, Chicago, Illinois.
(Marked "Government's Exhibit 91–U.")
Mr. ISSEKS. Austin J. Pritchard, Chicago, Illinois.
(Marked "Government's Exhibit 91–V.")
Mr. ISSEKS. W. H. Silge, Chicago, Illinois.
(Marked "Government's Exhibit 91–W.")
Mr. ISSEKS. A. Warchaloski, Chicago, Illinois.
(Marked "Government's Exhibit 91–X.")

Mr. ISSEKS. Your Honor, we have asked counsel for correspondence which would include the date indicated by these exhibits.

The COURT. March 31, 1938?

Mr. ISSEKS. March 31, 1938. But we are informed that the correspondence as of that period is not presently available. If the letter exists, of course, we would like to have it.

277 Now I would like to offer another group, and I have tried to put these in categories. I am not stating the category for the record but for your Honor's aid. I point out that the next three are in the category from the Government's viewpoint of one group.

The COURT. They all seem to have originated with Riggs on March 30, 1938.

Mr. ISSEKS. I will ask the witness a question.

The COURT. You need not unless you want to.

By Mr. ISSEKS:

Q. Riggs main office in 1938 was in Chicago, was it not?—A. Yes, sir.

Mr. ISSEKS. I now offer the next group. One is the record of Dr. M. M. Bushan, Los Angeles, California. This one shows on its face, your Honor, that it was reinstated, and we offer it for what transpired when it was cancelled in 1938.

(Marked "Government's Exhibit 92.")

Mr. ISSEKS. I offer the one of William J. Bertie, of Los Angeles, California.

(Marked "Government's Exhibit 92–A.")

Mr. ISSEKS. I offer the one of H. S. Beucher of Los Angeles, California.

(Marked "Government's Exhibit 92–B.")

Q. I will ask you a question, Mr. Singer. Was there a
278 policy of your company to remove a retail licensee if the local wholesalers wanted him removed?—A. We would consider the recommendation of a wholesaler for removal, the same as we would for placing him on the list. We generally took his word for it.

Q. I would like to have you answer my question directly if you can.—A. As a rule; yes.

Mr. Isseks. Your Honor, in that group I offered before there were two more.

The Court. In the Exhibit 91 series?

Mr. Isseks. Yes; in that series there were two, as you remember, that I said for some reason were undesirable. There are two that belong in that group near the end, and I give them to you [handing to Court]. They have been marked.

Q. Was it the policy of your company to remove someone as a licensee who did not believe in tinted lenses?—A. No, sir.

Q. Are you sure of that?—A. Definitely. Unless he just did not want to use any of our lenses.

Mr. Isseks. I now offer, your Honor, a copy of a call report. I think I have the original in longhand which was furnished us, and a typewritten copy. I think it will be easier on the eyes if we just use the typewritten copy. It is written by the same gentleman, with the initials F. B. S., with regard to Willis B. Blee, Brooklyn, New York. In that connection, we have here the
279 notice that went to him, the notice indicating that his license was cancelled on February 28, 1939.

(Marked "Government's Exhibit 93.")

Q. Do you generally give publicity to the fact that a license of a retailer was cancelled?—A. We do.

Q. You did?—A. We do; yes.

Q. I hand you a copy of Government's Exhibit 93 [handing to witness], and ask you whether that was ever brought to your attention?—A. No; I have never seen this before.

280 Q. Was it the policy of your company to remove a retail licensee who happened to have reached the age of sixty years old?—A. Well, we never had age limits.

Mr. Isseks. I now offer in evidence a call report of "E. R." Do you know who "E. R." is in your company?

The Witness. Elmer Robinson, one of our salesmen.

Q. And he covered the New England territory?—A. Yes.

Mr. Isseks. I offer the call report of Mr. Robinson as the next Government's exhibit, with reference to F. A. Gaylord, of New Haven, Connecticut.

(Marked "Government's Exhibit 94.")

The Court. This says the requirement is sixty years old plus something else. Was it the policy of your company to take someone off the list as a retail licensee because he was "covered with moss"?

The Witness. Well, we never made that a qualification about putting him on or taking him off.

By Mr. ISSEKS:

Q. Maybe I had better show you this exhibit. I show you Government's Exhibit 94 and ask you whether that instance was called to your attention?—A. No; not at all. Never saw it before.

281 Q. Was it the policy of your company to take someone off your list for nothing whatsoever?—A. No.

Q. You would not do that?—A. No. Nothing whatsoever?

Q. You would not take him off just because Southeastern Optical Company asked you to?

Mr. LEHRICH. Now, if your Honor please,——A. That is a different question.

Q. Would you take him off because Southeastern Optical Company asked you to take him off for no reason whatsoever?—A. If they said "for no reason whatsoever"?

Q. Yes.—A. No, sir.

Mr. ISSEKS. At this time I offer the record of the company in the case of E. G. Parham, of Memphis, Tennessee, and call your Honor's attention——

Mr. LEHRICH. That is another case of interpreting the document.

The COURT. He has not interpreted it yet.

Mr. ISSEKS. I stopped myself in time.

The COURT. He was teetering, but he got off.

(Marked "Government's Exhibit 95.")

Mr. ISSEKS. The document is in evidence and I may refer to it now?

The COURT. You may refer to it, certainly.

Mr. ISSEKS. There is a reference here to a letter of recom-

282 mendation from Southeastern, which I assume is Southeastern Optical Company, of June 7, 1939, and the notation "No reason given." And O.K.'d by R. G. L., whom I assume is Mr. Landis, and I call upon Bausch & Lomb or Soft-Lite to produce the letter of June 7, 1939, which I understand is subsequent to the period when the correspondence is no longer in existence.

Q. Mr. Singer, was the policy of your corporation to remove someone as a retail licensee for the sale of Soft-Lite lenses because he dealt in hearing instruments?—A. Of course not.

Q. I show you a corporate record with regard to Samuel A. Carlton, of New Orleans, Louisiana, and aks you if that was called to your attention?—A. No, sir.

Mr. ISSEKS. I also offer the corporate record in connection with that license in evidence.

(Marked "Government's Exhibit 96.")

Mr. LEHRICH. In this connection, I furnished to Mr. Glickfeld and Mr. Isseks additional communications which indicate that

the licensee, Carlton, of Louisiana, were no longer in the optical business but went into the hearing business, and no longer interested in lenses, and I think in all fairness the rest of the communication ought to be offered.

The COURT. Mr. Lehrich, that is why we have a plaintiff's
283 side to a case and a defendant's side. You will be given an opportunity.

Mr. LEHRICH. Except if I were with the Department of Justice we would not have a game of chess of this kind.

Mr. ISSEKS. Your Honor, I think that remark is uncalled for and should be stricken from the record unless we are going to go into personalities here.

The COURT. I think it would be best if we let each side try its own case to the best of its ability, and I am sure we will make the most progress that way.

Q. Now, Mr. Singer, your company has a price list policy does it not, with regard to the distribution of Soft-Lite lenses?

Mr. LEHRICH. I object to that question as too general.

The COURT. Overruled.

A. No.

Q. You say you do not have any policy?—A. Are you asking a price policy or any policy?

Q. Price policy.—A. No price policy. We have a policy.

Q. Do you tell your wholesalers what price you are going to charge them for the lenses?—A. Oh, yes.

Q. Do you tell the wholesalers what price they should charge for the lenses to the retailers?

284 Mr. LEHRICH. I object to that unless counsel specifies for what period such a direction was made, because there was a change here——

Mr. ISSEKS. 1936.

A. We have always had a policy. We have printed prices that we mail to the retailer so that he will know what the lenses cost him, and the wholesaler receives copies as well. He understood these were our suggested prices to the retailer.

Q. You say it was a suggested price to the retailer?—A. Yes, sir.

By the COURT:

Q. To follow that: you say you sent price lists to the retailer which would indicate to the retailer how much he will pay?—A. Yes, sir.

Q. And this constituted your suggestion to the wholesaler as to what he should charge the retailer?—A. Yes, as to what the retailer expects to pay for them, because it includes work done at the wholesale house.

By Mr. ISSEKS:

Q. Isn't it a fact, sir, that in 1936 you gave your wholesalers a price list and specified that they could sell the lenses to the licensed retailers only at prices designated by Soft-Lite Lens Company?—A. Very likely that was in one of the price lists; something like that. We said "Here are the suggested prices
285 to the retailer. These prices are sent to all of our retail licensees. Anyone purchasing from you expects to pay that price."

Q. Isn't it a fact that you told the retail licensees that they had to pay and could only buy at those prices?—A. Those were our prices to the retailers through the wholesalers, yes, sir.

Q. You testified yesterday that you did no business directly with the retailer?—A. But we—we did no billing to the retailer. You remember we had a little contention on that. I said we do the selling and get our profit from the wholesaler and we send him price lists and send him our materials.

Q. Do you sell your product, the Soft-Lite lenses, to anyone but wholesalers?—A. We only bill the wholesalers.

Q. Does title pass to the wholesaler?—A. Yes, it passes to the wholesaler.

Q. It does not pass to the retailer?—A. No.

Q. Do you mean to tell me that you want to stand on your statement before that you have no policy with regard to prices?—A. We have. We have suggested prescription prices that we issue to the retailer, and we send copies to the wholesaler, and those are prices that they charge for our lenses, and we tell them what the prices are.

Mr. ISSEKS. At this time I offer a memorandum dated
286 March 25, 1936, addressed to "Soft-Lite Licensees. New price structure," signed "Soft-Lite Lens Company. R. G. Landis. Vice-President."

(Marked "Government's Exhibit 97.")

Mr. SEYMOUR. We are getting into a little new field but I assume the objection that this is not admissible against Bausch & Lomb on the present state of the record at least, continues.

The COURT. Subject to the same reservation. I would like to read this first.

Mr. ISSEKS. Certainly, sir.

The COURT. All right. You may proceed.

Q. Now, Mr. Singer, in connection with any matter relating to price you were consulted, were you not, by your associates?—A. Any general price?

Q. Yes.—A. Yes, sir.

Q. And this new price structure in 1936, as to that you were consulted, were you not?—A. Undoubtedly.

Q. I direct your attention to Government's Exhibit 97, of which I have a copy, and call your attention to the fact that the end of the third paragraph contains a statement, "Soft-Lite lenses are to be sold regularly to all Soft-Lite licensee classifications only and at the prices and terms as shown therein." Was that part of your policy at that time?—A. Yes, sir.

Q. And has your policy continued since March 1936 to
287 date?—A. Up to the time some Fair Trade Practice Act came into effect, and then we went under that Fair Trade Practice Act, or whatever you call it, in which we had a fixed price, and at that time they were suggested prices.

Q. You did not have any relationship to the retailers? You did not sell to retailers.—A. No. We are talking about wholesalers. We told them what the costs were.

Q. In this notice you were telling what the cost was?—A. What the cost was to the retailer?

Q. Yes. You mean the price to the retailer?—A. Yes.

Q. He had to pay so much to get it?—A. That was the cost of our lens to him in the various forms when he bought from the wholesaler.

Q. But he was not buying from you?—A. No.

Q. You were telling him the price he would have to pay when he bought from the wholesaler?—A. We are telling him the cost on Soft-Lite lenses to him as a licensee when he buys Soft-Lite lenses and procures them from his wholesaler.

Q. That is right. What was the policy prior to 1936 with regard to sales made by the wholesaler to the retailer. Did you specify the price?—A. We always specified the prices, prescription prices at which our lenses were to be bought by the retailer.

288 Q. What about stock prices?—A. And stock prices when they were bought by a stock dealer.

Q. A stock dealer licensee?—A. A stock dealer.

Q. What about a stock dealer licensee?—A. Well, stock dealer and stock dealer licensee are the same thing.

The COURT. It is the same thing. You had stock licensees and prescription licensees.

The WITNESS. That is right.

Q. And you designated the prices he would have to pay when he was buying from the wholesaler?—A. The prices on our product?

The COURT. Not on your product, but on the wholesalers.

The WITNESS. The stock buyer would buy our product and the wholesaler would not touch it, but the prescription buyer would buy it with the work done by the wholesaler.

Q. The title always went from your company to the wholesaler?—A. Yes, sir.

Q. Even in cases where your company did prescription work for the wholesaler?—A. Yes, sir.

Q. How did you know the wholesaler would make delivery at the prices you suggested?—A. If the retailer could not buy it from John Jones, he naturally would buy it from another.

Q. These price lists went to every one of your whole-
289 salers and every one of your licensee retailers?—A. That is right.

Q. Now did you suggest in 1936 to the wholesalers the price which the retailer could get from the purchasing public?—A. No, sir.

Q. Never?—A. Not on our line of lenses.

Q. Soft-Lite lenses.—A. Not on Soft-Lite lenses.

Q. Was there a lens called the Soft-Lite Sport-Lite?—A. Now you are talking about a goggle.

Q. Is a goggle a lens or isn't it a lens?—A. Well, I will be glad to acquaint you with it. A goggle consists of a frame in which is mounted a pair of lenses. We produced such at one time.

Q. And in case of this combination of frame and lens did you tell the wholesaler and tell the retailer the price they would have to get from the purchasing public, the consumer?

Mr. SEYMOUR. I would like to rise at this time as simply a friend of the court and counsel to call attention to the fact that the subject matter of the alleged conspiracy is defined in the complaint as "A lens manufactured of glass to give normal vision to the user thereof, as in all types of spectacles and eye-glasses," and it does not seem to me to include the case of goggles.

290 The COURT. I have heard that distinction excluded. I understood the only difference between a goggle and the lenses is that the lenses were accompanied by a frame. If I am wrong about that, I will exclude it.

The WITNESS. The goggle in optical parlance is a plano lens. It is not a prescription lens. It is put out in quantity form in a frame and a case as merchandise.

The COURT. Oh, I see, but it was made of Soft-Lite glass.

The WITNESS. Yes, sir.

The COURT. And it gave the person neither normal nor abnormal vision.

The WITNESS. It neither helped nor hurt the vision.

The COURT. It did not have anything to do with providing abnormal vision like a microscope or a telescope would?

The WITNESS. It did not have anything to do with corrected vision as in prescription lenses. It had no focus to it.

The COURT. Is your definition as limited in the complaint used in the sense of those lenses that help to correct vision?

Mr. SEYMOUR. That is what it does; a lens manufactured to give normal vision. If it does not give something it is not a lens within this complaint.

291 The COURT. I take it a person having normal vision when he puts on a plain piece of glass is given normal vision by that glass.

Mr. SEYMOUR. I don't think he is. I do not think he is given it by the glass. I do not think this is of great importance, but it seems to me we ought to confine ourselves here to the lenses we are talking about, because if we get into the goggle field we are talking about an industry which involves thirty million pairs or something like that a year, a large figure, and a much bigger field than we have in the complaint.

The COURT. I am disinclined to accept that suggestion for the reason that if you are right, I would have to pass on every sale to determine whether it did give corrected vision, or perhaps whether he got a poor prescription.

Mr. SEYMOUR. I understand the very business of the Soft-Lite is selling the kind of lenses involved in this complaint, which is the kind that gives normal vision. The charge is there was restriction of competition in that field in that kind of lens, and not restriction in the goggle field—not a conspiracy with respect to the goggle field. My point is that goggles are not within the complaint and if we go into the goggle field we go beyond what is charged.

292 Mr. ISSEKS. I am not interested in goggles. I am interested in Soft-Lite lenses. It is a Soft-Lite lens, as I understand it, that is put in this frame.

The COURT. That is my understanding of it, and I do not understand the definitions given in the complaint were intended to other than exclude so-called special types of glass which give either distorted vision or enlarged vision or distant vision, or photographs, or different things of that kind, but I think that a lens which may not be adjusted to anything away from normal is a lens within the terms and definition of that complaint, because it is intended to permit normal vision. I construe the word "give" as not to mean necessarily "confer" but to allow for. Because certainly if you gave a pair of lenses of this kind to a blind person they would not give him any normal vision, but they would permit normal vision if he had it.

Mr. SEYMOUR. I never heard it suggested before until this question was asked, that goggles were in this complaint.

Mr. ISSEKS. We are not talking about goggles. We are talking about Soft-Lite lenses.

The COURT. I am not interested in the frames, if that is what you mean.

293 Mr. LEHRICH. This is one unit, just as if these were in a miscroscope, and we issued a bulletin on the microscope with the Soft-Lite lens in it. It is a finished unit, frame and lens, and it is advertised and sold as such.

The COURT. Sold as a goggle.

Mr. LEHRICH. Sold as a goggle, a different unit, just as if we put it in a toy——

The COURT. But you did put it in your goggles?

The WITNESS. Yes. We bought them from an optical company, we bought the frames, about a thousand or fifteen hundred of them, and we brought it out and put them out to the retailer, and we suggested that they get $8 or $10 a pair complete. That was on the unit.

The COURT. To whom was it sold? To the lay public without any prescription or advice?

The WITNESS. Yes, sir. It was just a goggle.

The COURT. Was it just a pink-tinted glass?

The WITNESS. Well, we put it out in three or four shades of glass.

The COURT. Enough to keep the sun out?

The WITNESS. Yes, sir.

Mr. ISSEKS. Who made the Soft-Lite lenses?

The WITNESS. Bausch & Lomb, and the frame was by Bay State, and the case by somebody else, and it all amounted to about one thousand or fifteen hundred units.

294 The COURT. It may be relatively unimportant in this picture, but I think if that frame contained a Bausch & Lomb manufactured piece of glass of a trade-marked article called Soft-Lite, and it did not give abnormal vision, that it is within the scope of this complaint.

Mr. ISSEKS. May I proceed, your Honor?

The COURT. Yes.

By Mr. ISSEKS:

Q. You did, in connection with that combination of Soft-Lite lenses and frame, tell the wholesaler the price he should get from the public? A. Not the wholesaler. We had, as I remember, a suggested retail price that the retailer was to get from the public for the goggle, Sport-Lite or Over-Glass, and the price he could buy them for in quantities from the wholesaler, and we told the wholesaler what we would sell it to him for in quantity, or say to the extent of maybe two thousand units as against the sale of 400,000 pairs of lenses that were sold.

Q. You sent a notice to your groups of wholesalers in which you set forth just the price to the wholesaler and the price to the retailer and the suggested minimum price to the public? A. Very likely. May I say that we called it a Sport-Lite and
295 Over-Glass. Yes, we put that out.

Mr. LEHRICH. May I have that question read?

(Question and answer read.)

Mr. LEHRICH. I object to the question unless Mr. Isseks includes the price of Soft-Lite lenses to the public, because that is the issue in this case.

The COURT. No, I will permit him to ask as to the article of which the Soft-Lite lens was a dominant part, part of a substantial article of sale, although in a frame.

Mr. LEHRICH. The suggested price is of a Sport-Lite or of an Over-Glass.

Mr. ISSEKS. I will add that to the question. I will take the modification.

The WITNESS. That document was sent to our wholesaler.

Mr. ISSEKS. Thank you. I now offer the two documents, both dated May 14, 1936, one addressed to Soft-Lite Class A Wholesalers and the other addressed to Soft-Lite Wholesalers, and first take the one addressed to Soft-Lite Class A Wholesalers.

Mr. SEYMOUR. I assume an objection to the scope of the evidence as beyond the scope of the complaint will continue along on anything which Mr. Isseks offers as to goggles.

296 The COURT. That is correct.

Mr. ISSEKS. Today is the first time I saw these documents, and if he has any more, I will offer them.

The COURT. I assume there is an objection to them on the part of Mr. Lehrich on the ground they are beyond the scope of the complaint and I will overrule the objection and give you an exception with respect to both documents.

(Marked "Government's Exhibits 98 and 99.")

(Short recess.)

Q. Mr. Singer, in 1939 you changed your price list, did you not; sometime in the Spring of 1939 or the late Winter?—A. I think so.

Q. In connection with the proposed changes you sent out advance copies to your wholesalers, did you not?—A. If you show it to me I will confirm it.

Q. I want to see if I can get your recollection.—A. Will you repeat the question, please?

Q. (Question read.)—A. That is our procedure.

Mr. ISSEKS. At this time I would like to offer the form letter that went out to the wholesalers dated February 25, 1939, ad-

dressed to Branch Managers and Soft-Lite Wholesalers, and signed "Soft-Lite Lens Company, Inc., R. G. Landis."

297 (Marked "Government's Exhibit 100.")

Q. You testified yesterday as to the distinction between Class A Wholesalers in the early part of 1939 and distributors?

The COURT. That was prior to the Robinson-Patman Act.

Mr. ISSEKS. That is right.

Q. And in February 1939 you still had those two groups, did you not, if you remember?—A. I am not sure about the date, but before that Act we had two groups. After that we had one group.

Mr. ISSEKS. At this time, your Honor, I would like to offer a form letter dated February 25, 1939, which apparently went to Class A Wholesalers, because there is a notation in the upper left hand corner, "Class A" and signed "by Soft-Lite Lens Company, Inc., R. G. Landis."

(Marked "Government's Exhibit 101.")

Q. Now, Mr. Singer, before you put out your new price list in the early part of 1939 did you take the matter up with Bausch & Lomb Optical Company?—A. No, sir.

Mr. ISSEKS. I offer, your Honor, a letter dated February 25, 1939, which apparently went to the distributors, because there is a notation in the upper left hand corner, "Distributors' letter" and signed by "Soft-Lite Lens Company, Inc., R. G. Lan-

298 dis." May I point out the difference, your Honor, between the two exhibits.

The COURT. The next to the last paragraph?

Mr. ISSEKS. Yes. It is the next to the last paragraph, which is not in the last exhibit.

The COURT. So I observed. It is capable of several constructions.

Mr. ISSEKS. I am going to ask the witness about it, if I may. I offer it in evidence.

The COURT. Very well.

(Marked "Government's Exhibit 102.")

By Mr. ISSEKS:

Q. Now, Mr. Singer, did you see Government's Exhibit 102 before it went out to the distributors [handing]?—A. No. I saw it after it goes out only with all other policies and data that go out. That is prepared by us.

Q. You saw it after it went out?—A. Yes, sir.

Q. Did you see this one after it went out?—A. All of them. I presume that is in it.

Q. The next to the last paragraph states——A. May I read it? I can understand things better when I visualize them.

Q. I call your attention first——A. Let me read it first.

Q. All right, go ahead.—A. I had better read the whole thing, if you do not mind.

299 Q. I do not mind, no.—A. Yes, sir?

Q. First of all, you notice there is a reference in the paragraphs to which I direct your attention, that "Both our company and the Bausch & Lomb Optical Company have cooperated substantially in the expectation that these price adjustments will materially increase your total sales through substantially increased stock business." There is no reference in the letter of the same date to the Class A wholesalers to that subject matter. You may take my word for it, and if there is any question about it I am sure your counsel will straighten it out, and I wonder if you can explain why there is a letter going to the distributors to that effect and not a letter in the same tenor going to the Class A wholesalers, if you know, sir. I also suggest to you the letters are otherwise substantially identical.—A. May I understand your comment, Mr. Isseks? These letters are substantially identical with the exception of that one paragraph?

Q. Yes.—A. I am very glad I read it, because I find something that looks quite different to me.

Q. All right, you point it out.—A. A very important paragraph. We told the Class A wholesalers something that does not appear at all in that: "We realize that under this new stock

300 price list there will be little or no profit to you on stock sales, especially those made under the new 25 and 50 pair columns. Accordingly, we plan to contact you as soon as possible for the purpose of discussing mutually satisfactory arrangements under which your firm may qualify as a distributor. Obviously it would be decidedly unprofitable for you to continue to purchase Soft-Lite lenses on the present basis if any appreciable percentage of your Soft-Lite sales will be made to stock licensees under the new price list." That is why I like to take time when I get these documents and read them over. That is a big difference to me.

Q. Can you tell us why the paragraph relating to the cooperation between Bausch & Lomb and your company is not in the letter addressed to the Class A wholesalers, if you know?—A. No reason in the world. This is because Class A dealers are not interested in the stock list until they become a distributor, and those fellows were, and we point out they are getting a saving in cost which justifies them in selling on a quantity basis.

The COURT. Was there a reduction of price announced at that time to distributors and not to Class A wholesalers?

The WITNESS. Well, I do not know. May I ask my associate a question? May I ask Mr. Landis a question?

The COURT. Off the record, yes.

301 (Discussion off the record between witness and Mr. Landis.)

By the COURT:

Q. At that time, or February 25, 1939, and that is the only time I am interested in, at the time you sent out this new price list, you say that an advance copy of the new price list is enclosed. Did that contain a reduction of prices for distributors whereas either a lesser reduction or no reduction of price to the wholesalers?—A. Well, that is why I wanted to get some information. I think the answer lies in our bonus plan. The Class A wholesaler did not come under the bonus plan. If you notice, we say instead of getting 10 cents a pair he is to get 25 cents, and we could not sell the Class A wholesaler unless he became a distributor.

Q. So there were some changes offered on this list to the distributors but not to the Class A wholesalers?—A. Yes, because they were going out the following month. We eliminated them about a month or two later.

By MR. ISSEKS:

Q. In both Government's Exhibits 101 and 102 the first pages are identical. Did you check them?—A. I did not check them. I want to read them both.

Q. Well, read them paragraph by paragraph. I say the first page.—A. Yes; they look alike.

302 Q. Now in both cases to the distributor and to the Class A wholesaler, advance copies of the new Soft-Lite stock price list was enclosed, was it not?—A. Is that the same letter I just saw?

Q. Yes. You saw the ones to the Class A wholesaler and this is the one to the distributor.—A. Yes; I know.

Q. And that is the price which the wholesaler would sell to the retailer—A. Yes, sir.

Q. Now in Government's Exhibit 102, having in mind you are talking about the price the wholesaler will sell to the retailer, you said "Both our company and the Bausch & Lomb Optical Company have cooperated substantially in the expectation that these price adjustments will materially increase your total sales to substantially increased stock business." My question is whether you had conferences with the Bausch & Lomb people as indicated in that letter?—A. Not in line with what you are tying it up with.

Q. Please don't——A. Not in that connection.

Q. Did you talk with them?—A. About price?

Q. About price.—A. About cost?

The COURT. It is either yes or no.

The WITNESS. I don't know what he means by "price."

Q. The price you would charge your customer?—A. No.

Q. Did you talk about the price you would charge your
303 distributor?—A. We never discussed that with Bausch & Lomb.

Q. Did not Bausch & Lomb send you a proposed price list that you would turn over to your customers?—A. We might have had exchanges——

Q. I ask an answer to my question, yes or no.—A. Did they give us the price list we use?

Q. Which you finally adopted, word for word, in 1939?—A. All I can say is, I cannot answer that yes or no.

Q. Isn't it a fact that Mr. Scott Sterling sent you a proposed price list you were going to use for your wholesalers and retailers and which you adopted, and in which you said, "We are going to put it into effect precisely as shown therein."—A. I do not recall that. If you show me.

Q. Yes.—A. Show me some evidence. I will be glad to look at it.

Q. I will show you. I show you a letter addressed to you by Scott Sterling. Who is Mr. Scott Sterling?—A. He is with the Bausch & Lomb Optical Company.

Q. What was his position in 1939, in March?—A. He is in the educational or scientific sales department.

Q. In the lens department?—A. Yes, sir.

Q. I show you a letter dated March 24, 1939, addressed to you and signed "Scott," which has attached to it a suggested
304 price list. First your schedule, and then suggested, and ask you whether you received that in the regular course of business?

The COURT. I don't care whether it is regular course of business or not.

Mr. ISSEKS. I am sorry, your Honor.

The COURT. I just indicated if his answer was, "I received it, but not in regular course of business," I will still receive it.

Mr. ISSEKS. Perhaps we can have the original letter here. I think it is in the court room. I have a copy for your Honor if your Honor wants to look at it.

The COURT. I will look at it after you offer it.

Mr. ISSEKS. While the witness is reading it I will make a formal offer. I offer the document dated March 24, 1939, addressed to the witness and signed "Scott Sterling," with the schedule attached relating to Soft-Lite Plano Meniscus.

The COURT. There is no question that the letter was sent and received?

Mr. LEHRICH. May I direct your Honor's attention to the paragraph before the last in that letter?

The COURT. Very well, I will take that suggestion and the letter will be received and marked.

(Marked "Government's Exhibit 103.")

305 Mr. ISSEKS. I would like to have the schedule marked as Government's Exhibit 103-A.

(Marked "Government's Exhibit 103.")

Mr. ISSEKS. I suggest that your Honor read the whole letter and the schedule and the reply of course is more important, which I have in my hand.

Q. My question is whether you received that letter?—A. Before I answer, I would like to see that price list, that bulletin you showed me with the price list. I am almost afraid we are talking about two different things here.

Q. Oh, no. My question to you before was whether or not you discussed price list in 1939 with anybody in 1939 at Bausch & Lomb, and I think you said "absolutely not." My question is whether it is not a fact that in 1939 you received from Mr. Scott Sterling a price list which you adopted in toto on Soft-Lite Plano Meniscus lenses?—A. You showed me a bulletin on our whole line. I would like to see the price list a minute.

The COURT. I will permit the witness to explain if he meant he did not talk with him with relation to the letter of March 25th, but talked with him with relation to it at some other time. I will permit that.

By Mr. ISSEKS:

306 Q. I show you the letters dated February 25, 1939, two letters, Exhibits 101 and 102.—A. May I see that Soft-Lite stock price list referred to. I think we are talking about two different subjects [same handed to witness]. I want to know what we are talking about and then I can know what the answer is.

Q. I do not know what your Soft-Lite stock price list for 1939 is. I am trying to find out if you talked to Bausch & Lomb about prices or lists on something you sold somebody else, and wholesalers sold retailers. That is what the case is about.—A. Yes; but that is not the way I got the question.

Q. I will start all over again.—A. Before you do that, I want to know whether you are talking about the general line or goggle lenses; the letter is in regard to plano Meniscus.

Q. No; I am talking about the lenses that you or your company changed the price list on in 1939. Did you talk to Bausch & Lomb about that in 1939, March 1939, or February 1939?—A. I can make

it clear if you will permit me to explain: I have discussed prices with Bausch & Lomb—others and ourselves—frequently. I have discussed prices with wholesalers frequently. We then reviewed the situation at our office and we decided on what the prices are to be. I thought you said to me when this came out, are these the prices that Bausch & Lomb suggested or discussed. They
307 may be or may not be. I doubt it, because their experience would not be like ours. They can give suggestions in a letter or sentence. He says, "Of course you are going to do as you like," as we always did. He is taking a Meniscus lens, and this [indicating] pertains to our regular lenses.

Q. You did not talk to Mr. Scott Sterling about your regular line?—A. I do not think so; not in connection with these things. He may have given us——

Q. Did you talk to Mr. Ramaker about your regular lines?—A. At any time?

Q. In February or March 1939.—A. We may have suggested it or talked about it but we were talking about our costs from him.

Q. Didn't you talk with Mr. Ramaker about your proposed bonus plan for wholesalers?—A. We might have. Very likely.

Q. Didn't you? Not might have. Didn't you? Don't you remember you did?—A. Mr. Isseks, we in the optical business discuss a great many things I cannot put dates on. Very likely I did. I discussed a lot of things with Mr. Ramaker. He is the one man we deal with at Rochester, just as I used to deal with Joe Hammele to get information and give information and do whatever we thought in the best interests of our business.
308 Q. Isn't it a fact that before this very price list you put out on every one of your lines you took the matter up with somebody at Bausch & Lomb?—A. Absolutely no.

Q. Isn't it a fact that you took up from time to time with somebody at Bausch & Lomb the proposed new price list?—A. The reason is——

The COURT. No. Yes or no.—A. No.

Q. Did you ever take up the matter of price lists in connection with new prices or proposed new prices on any part of your line with Bausch & Lomb representatives?—A. Definitely yes.

Q. Now you tell us when you did and how frequently you took up the February 1939 price list and took up the new proposed list put out about then?—A. If it involved cost, yes.

Q. I am talking about the business from you to the wholesaler and from the wholesaler to the retailer?—A. If it involved our cost, yes.
309 Mr. SEYMOUR. If your Honor pleases, I want to raise one question—I did not want to interrupt before—again about the scope of the complaint. Because I would like to see us hold

this case within what the Government is contending for. As I understand the charge here we are dealing with a charge of conspiracy to control the price from the wholesaler to the retailer and from the retailer to the public. There is no charge of conspiracy to control the price at which Soft-Lite sold to the wholesaler. I am not disturbed at all about an inquiry into this subject, and I do not make my objection for that reason. But the Government after examination of the defendant's documents and a grand jury examination into the optical industry, in this ditrict, drew this complaint. I submit that we ought to stay within its bounds. I do not find in this complaint any charge with respect to a conspiracy between Bausch & Lomb and Soft-Lite to fix the Soft-Lite price to the wholesaler. This seems to relate solely to the charge by the wholesaler to the retailer and the retailer to the public. If that is so, it seems to me that inquiry along these lines, that is along the lines of discussions about price at which Soft-Lite would sell, are wholly immaterial. I do not deny and have not suggested for a moment——

310 The COURT. The document, Exhibit 103, has the schedule entitled "Wholesaler to Retailer."

Mr. SEYMOUR. I am not objecting to that document at the moment. Counsel has just put to Mr. Singer a question which squarely raises the point I made.

Mr. ISSEKS. Your Honor, I would like to direct your attention to Paragraph 12 (d) of the complaint. We charge the defendants with conspiring "to force such wholesalers and retailers to observe certain arbitrary and unreasonable prices in reselling such tinted lenses".

The COURT. He does not differ with you about that. He says the complaint does not charge conspiracy between the two principal defendants to fix the prices at which Soft-Lite would sell to the wholesalers. That language does not say what I have just now said. But I did not follow where the question put violated that.

Mr. SEYMOUR. I thought the question was in substance and effect—and it is the reason I made my objection—this way: Did you discuss with Bausch & Lomb the price at which you would sell to WHOLESALERS? That raises the question specifically.

The COURT. What have you to say about that, Mr. Isseks?

Mr. ISSEKS. I think that is within the issues of the com-

311 plaint; because the only way you can get the prices from wholesalers to retailers is to discuss the prices at which they are to be sold to the wholesalers. You have to take one step down the line. If the fact is that they talked about prices to the wholesalers and then fixed the price to the retailers, how can you find that intermediate step unless you inquire about it?

That document shows that they discussed prices all the way down the line.

The COURT. Why can't you ask that question as to fixing of prices from wholesalers to retailers?

Mr. ISSEKS. That is the next question.

The COURT. But the question here is whether the question that you put is admissible.

Mr. ISSEKS. I contend it is, your Honor. First of all we charge a conspiracy with regard to the whole system, and part of the system is the price to be charged the wholesalers.

Mr. SEYMOUR. My point is is that it is not as to the whole system, but a very precise charge.

The COURT. I will ask you to call my attention to the part of the complaint which charges a conspiracy with respect to prices to wholesalers or distributors.

Mr. ISSEKS. We charge in the complaint: "The defendants have violated and are now violating Sections 1 and 3 of the
312 Sherman Anti-Trust Act by unlawfully contracting, combining and conspiring to restrain interstate trade and commerce in tinted lenses among the several States of the United States, and between the States and the District of Columbia and in the District of Columbia, and more particularly by contracting, combining and conspiring: (a) to designate and select, according to certain arbitrary rules and regulations, wholesalers and retailers to handle, deal in, and sell certain tinted lenses known as Soft-Lite lenses; (b) to sell such tinted lenses only to such designated and selected wholesalers and retailers; (c) to restrain such wholesalers and retailers from selling to other wholesalers and retailers not so selected; (d) to force such wholesalers and retailers to observe certain arbitrary and unreasonable prices in reselling such tinted lenses." I say that you cannot get at the resale price unless you find the wholesale price. There is no other way of finding out what it is. One is based on the other. It is a discount basis.

The COURT: Yes; but there might be a wholesale price without there being any conspiracy in relation to the wholesale price.

313 Mr. ISSEKS. But if it happens to be a conspiracy on both——

Mr. SEYMOUR. Then the Government should charge it.

The COURT. The complaint does not charge it, or I have not found it.

Mr. ISSEKS. If your Honor will not permit it on other grounds, I move to amend the complaint right now in open court.

Mr. SEYMOUR. We certainly should object to any such amendment.

The COURT. That is a pretty substantial amendment to make here.

Mr. ISSEKS. It is ancillary to the price fixing to the retailer. It seems to me that the evidence is admissible because it is ancillary, and certainly if it is provable it is admissible as another crime.

The COURT. This is not a criminal prosecution, of course.

Mr. ISSEKS. I mean similar acts, and showing intent. It seems to me that your Honor cannot exclude one phase of any agreement to violate the law when it is ancillary to another phase.

THE COURT. I am not so much troubled by the question
314 as to whether this particular question is admissible or not; because presumably there may be room to admit a fairly free exploration of the price structure of this commodity generally in order to understand it. We are dealing with a commercial enterprise and a manufacturing enterprise, and it is very difficult to take one skin of the onion and examine it independently without relationship to the other skins that wrap it round. But I am concerned with the scope of the complaint because that is going to come up again and again, so I should like to have that matter clarified.

Mr. ISSEKS. Look at Paragraph 13, your Honor: "Following the organization of defendant Soft-Lite Company, the defendants herein combined and conspired to establish and maintain a closely regulated scheme of distribution." I say part of the scheme of distribution is price fixing from Soft-Lite to the wholesalers. We are not supposed to allege in the complaint paragraph by paragraph and line by line; I think there are cases holding it is sufficient if we had stopped in Paragraph 12 with "District of Columbia,"—"conspiring to restrain interstate trade and commerce in tinted lenses among the several States of the United States, and between the States and the District of Columbia and in the District of Columbia." If we can show price fixing, that is sufficient.

315 The COURT. Then you have (a) to (e) which would constitute a bill of particulars.

Mr. ISSEKS. They could have made a motion for a bill of particulars. We have given them interrogatories which indicated that we were going into this very subject.

Mr. SEYMOUR. The very reason that the complaint should be confined is that there have been these intermediate procedures, preparing the case on the assumption that this complaint was the measure of the case we had to meet, and counsel should not be allowed to go beyond it.

Mr. ISSEKS. We have advised them of this subject weeks ago, and that it would be gone into, under the interrogatories. Had

we stopped with the words "District of Columbia" your Honor would not have any question about it. We say this is price fixing between the manufacturer and distributor and affect the next intermediate step.

The COURT. There is no question that had you stopped at the words "District of Columbia" this would be within the scope of the complaint.

Mr. ISSEKS. I say that the next paragraph covers it.

The COURT. Suppose having stopped at the words "District of Columbia" they asked for a bill of particulars and you had then come in with (a) to (e). You would have excluded
316 it from the scope of your complaint. Mr. Seymour says that is what you have in your complaint brought back by Paragraph 13.

Mr. ISSEKS. No motion for a bill of particulars was made, and it would come within Paragraph 13. Anything that would relate to a closely regulated scheme of distribution. There is another thing that I ought to point out, your Honor. We do not know what these gentlemen do in the privacy of their rooms. There has been a reference to a grand jury proceeding. If there is, I will have to make reference to what transpired as the result of it.

The COURT. Does this particular line of proof come within the scope of the complaint; that is the question.

Mr. ISSEKS. On the question of surprise, we did not find out about it, your Honor——

The COURT. It would not make any difference.

Mr. ISSEKS. We gave them the material in the interrogatories.

The COURT. That might be responsive to the claim of surprise.

Mr. ISSEKS. Yes; and on that issue. I think it is within the issues of the case. If it is not, I move to amend in open court, because the rules of Civil Procedure never intended that there be any gain of any kind by this. I think this is an important matter and that your Honor can permit an amendment.
317 As long as there is no surprise and nobody is caught unawares. They have known this for three months.

The COURT. I will hear you, Mr. Seymour, on whether that is not brought back in under Paragraph 13.

Mr. SEYMOUR. It seems to me the structure of this complaint follows the very happy form which Mr. Isseks has adopted in a great many cases in this District and other Districts—I mean his Department has—of charging the conspiracy specifically. We are here to try the conspiracy charged. The balance of it charges again generally a conspiracy and then the steps alleged to have been taken in it.

The COURT. Is the 13th part of the conspiracy? You notice Paragraph 14 then proceeds to give some so-called overt acts under the plan set out in Paragraph 13.

Mr. SEYMOUR. I think if I am correct the structure is that 12 charges a general violation and then the specific conspiracy with which we are faced. Then the complaint proceeds with some repetition, if you will, to advert again to the general conspiracy, and then to deal rather specifically with the steps. But 12 is the paragraph.

Mr. ISSEKS. Your Honor, I would like to point out that Paragraph 16 covers this right on the nose.

318 The COURT. Let us stick to 12 and 13. 12 says the defendants have violated the Sherman Antitrust Act by conspiring to do certain things. Then 13 proceeds to charge, again in the language of the statute, that the defendants combined and conspired to do certain additional things. In other words, there are two conspiracies charged here, in effect. Now why isn't that material brought in under 13?

Mr. ISSEKS. May I make a suggestion which I think will help your Honor and counsel.

The COURT. Yes.

Mr. ISSEKS. If you will read Paragraph 16: "Pursuant to said combination and conspiracy, the defendants named herein have worked in close cooperation in promoting the sale and distribution of Soft-Lite lenses, and defendant Bausch & Lomb has conferred, communicated, and agreed with Soft-Lite Company from time to time"——

The COURT. It says they established a resale price by wholesalers. It does not say they established a price to wholesalers. In other words, Paragraph 16 would not help you unless you go back to 13.

Mr. LEHRICH. 16 modifies 13, I think.

The COURT. 16 is an overt act under the two conspiracies charged in 12 and 13. Mr. Seymour, I would like to have

319 you tell me why 13 is not one of the conspiracies just as well as 12. Why do we not have here two conspiracies, one a conspiracy to restrain interstate commerce, and the other a conspiracy to maintain a closely regulated scheme of distribution. As I gathered it when I first read the complaint it seemed to me they were charging the old-fashioned conspiracy, and in 13 a specific conspiracy, a more modern conspiracy.

Mr. SEYMOUR. It seems to me in the structure of the complaint 13 is merely repetitious of the general charge, and then begins to go into the steps of the plan; that the ambit of the conspiracy is the one alleged in Paragraph 12, and indeed in 13 where the

reference is to prices. The reference is to the fixing and maintenance of resale prices of such lenses. But I find nowhere except in 12 a specific allegation of the scope of the conspiracy. 13 ought not to be construed to broaden it. Because 13 is sort of a nexus between the specific allegation of conspiracy and the steps in the conspiracy. I do not see why there should be both paragraphs, 12 and 13, if both are regarded as charging the scope of the conspiracy.

The COURT. Why not? I say I do not see why we cannot construe it—it seems logical to me unless you can persuade me to the contrary—that Paragraph 12 charges the old-fashioned
320 kind of conspiracy, if you know what I mean, and I think you do.

Mr. SEYMOUR. A pre-Ethyl kind of conspiracy.

The COURT. Yes; and 13 charges an Ethyl conspiracy, a distribution system. That was the concept more or less created by that case which we thought was not in that field after the Colgate case. Why isn't that perfectly logical, that they have charged them both? Particularly am I impressed with the language of Paragraph 13, which does not say that in carrying out the foregoing conspiracy, which would be the normal way to proceed after charging the conspiracy, you did the following; but they say in Paragraph 13 that the defendants here combined and conspired. Striking out Paragraph 12 and leaving 13 in, you still have a good complaint.

Mr. SEYMOUR. The difficulty is that construction seems to me to be that both 12 and 13 deal with a system of distribution.

The COURT. You mean 13 is not broad enough to include that, taken independently of 12—the arrangement of prices to wholesalers?

Mr. SEYMOUR. It does not seem to me so.

The COURT. They charge the establishment of a closely regulated scheme of distribution. I suppose wholesaling is a part of the scheme of distribution.

Mr. SEYMOUR. I agree that under 13 because of the
321 specification of prices in that paragraph, the prices at which the wholesalers sell to retailers and the retail price would be admissible. But that is precisely the conspiracy charged in 12. I see no function for 13, or in the structure of this complaint, if you are to say there are two different conspiracies charged here, one in 12 and one in 13. And it seems to me plain that the ambit of the conspiracy is in 12, or perhaps some further specification of it is in 13 but not broad enough to include this.

The COURT. Paragraph 13 goes further. 13 goes beyond Paragraph 12, in that it includes price maintenance, which is not included in 12. I am taking considerable time on this phase of

it because it is coming back to plague us again unless we all have a fairly clear idea about it.

Mr. SEYMOUR. Yes; and it will have us a good deal of time depending on the way we construe it.

The COURT. I am not disposed to permit the Government to enlarge the scope of its complaint, in transactions of this kind, relying on its amending power at the trial, unless there be some very strong reasons for permitting it. On the other hand, I am not persuaded we should read these complaints with any other thought than with a sensible regard for the scope of them.

322 I do not see why I should not be able to construe 13 as an additional conspiracy supplementing the Paragraph 12 conspiracy.

Mr. SEYMOUR. I confess, your Honor, what I did before your Honor raised the point was to study this complaint with a good deal of care to see whether anywhere there was anything specific charge on this point. The conspiracy paragraph would seem to be 12, and not elsewhere could I find it. It seems to me this point is well taken.

The COURT. May I ask you another question, as to surprise. Are you surprised by this proof?

Mr. SEYMOUR. I am not surprised that the Government offered this proof. I rather felt it coming. And I indicated in my trial memorandum that it would be offered. I am very much surprised that your Honor should find——

The COURT. The complaint embraces it.

Mr. SEYMOUR. That is not embraced in the complaint. It seems to me the complaint does not embrace it, and therefore it ought to be excluded. As to the application to amend, as we are approaching the recess may I have overnight to consider it and study this matter further?

The COURT. Yes; and I will myself. I do not want to make a final decision now. But I will indicate to you now how my mind is running so that if you gentlemen want to give it some thought overnight we will come here with clearer minds.

323 My present inclination is to hold that this complaint charges two distinct conspiracies, one, a conspiracy to do the things designated in Paragraph 12 (a) to (e), which is one conspiracy, and 13, a conspiracy to establish and maintain an Ethyl system of distribution with price maintenance as a part of it. And I regard that as a separate and distinct conspiracy which will include the wholesaling, if the Government offers proof on it, and therefore dispense with the necessity of amendment. However, I think it might be well to give this some further thought.

Mr. SEYMOUR. I suggest that this matter go over, and that the ruling on the question be withheld; also that the ruling on counsel's motion to amend be held until tomorrow.

Mr. ISSEKS. I won't move to amend unless your Honor rules against me.

The COURT. He won't amend unless I hold contrary to his theory. Is your next question dependent on a ruling on this one?

Mr. ISSEKS. No; I would just offer the documents and ask no questions, because they speak for themselves.

Mr. SEYMOUR. Well, we would object to those.

The COURT. There will be an objection to the document, unless it is admissible for other reasons.

324 Mr. ISSEKS. It covers two subject matters. It covers the minimum resale price down to the retailer as well.

The COURT. Exhibits 103 and 103–A have been admitted.

Mr. ISSEKS. Exhibits 103 and 103–A deal with this subject matter. They deal also with the subject matter of the minimum resale price from the wholesaler to the retailer.

The COURT. While we are considering this, I would like to know what a Plano-Meniscus lens is.

The WITNESS. Those are lenses without focus. They are used in goggles.

The COURT. You mean there is no refraction?

The WITNESS. No.

By Mr. ISSEKS:

Q. Aren't they used in any glasses other than goggles?—A. They are used wherever you want to reduce the sun. They have no focus or they would not be plano. And the size would indicate they are made for goggles. They are a very large size.

The COURT. And what does "meniscus" mean?

The WITNESS. It is a lens of that cylindrical combination.

The COURT. How can you have the plano and sphere; they seem to be contradictory.

325 The WITNESS. I have never been dubbed an expert in that side of it. You will have to ask one of the optical men who knows that.

Mr. LEHRICH. If your Honor wants it off the record, Mr. Sterling can give it to you off the record. He is an expert.

Mr. ISSEKS. No; we will give Mr. Sterling an opportunity.

The COURT. We will wait until Mr. Sterling is on the stand. Is it possible that the word "meniscus" is applied to all lenses, to torric lenses?

The WITNESS. Two-thirds of the lenses are torrics. That is the lens with the cylindrical combination in it. One-third is a sphere.

The COURT. The others are not referred to as the meniscus?

The WITNESS. The others are torrics. Cylindricals are torrics. Those not cylindrical are spheres. The Meniscus lens is a lens without a cylinder in it, and the plano lens without a focus in it. They can only be used where you want a goggle.

The COURT. Is it the same as a piece of window glass?

The WITNESS. No.

326 The COURT. I do not mean the same glass, but a perfectly flat sheet of glass?

The WITNESS. No; it is made on a six base curve.

The COURT. The glass is curved but does not have a variation in thickness between the edge and the center?

The WITNESS. Yes; no focus. No strength to it, as you call it.

Q. You include the Meniscus or Plano-Meniscus Soft-Lite lenses in your Soft-Lite price list?—A. We had at one time.

Q. Do you now?—A. We used to. I think we used to have them plano to 2, and now it is 0.12 to 2.

Q. Did you include them in your price list in 1939—A. I cannot remember.

Q. You replied to Mr. Scott Sterling's letter, did you not?—That was 20 minutes ago. I would like to see that.

Q. Government's Exhibit 103 is a letter addressed to you. Exhibit 103 is the top one, and inside is Exhibit 103–A [handing to witness]. You replied to that one, did you not?—A. I don't know whether I did or somebody else did.

Mr. ISSEKS. I offer the reply dated March 29, 1939, addressed to Mr. Scott Sterling. The copy we have has no signature, but indicated on the bottom is "N. Singer." I will show it to the witness and ask whether that is the reply, and perhaps see if there is any dispute about it.

326–A Q. I ask you whether Government's Exhibit 104.—A. I would like to read that. Whether I wrote this? My name is on it, and I must have written it. I would like to read it.

The COURT. This is a good point to stop. We will adjourn until 10:30 tomorrow.

(Adjourned to Thursday, September 18, 1941, at 10:30 a. m.)

327 UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY ET AL.

NEW YORK, *Septeber 18, 1941,*
10:30 o'clock a. m.

Trial resumed.

NATHANIEL SINGER, resumed the stand.

Direct examination continued by Mr. ISSEKS:

Mr. SEYMOUR. Does your Honor wish to proceed further with the matter we were discussing when we adjourned last night?

The COURT. What is the status of our record? Is there a question which requires a ruling?

Mr. ISSERS. Your Honor admitted the last exhibits I assume for all purposes. We offered them both for the fact that it shows that they were getting together on fixing the retail price, that is, the wholesaler to the retailer, and for the price between the manufacturer and the wholesaler, namely Soft-Lite Company and the wholesaler, so the issue is raised there.

The COURT. Of course if the document is admitted it is not important that I rule for what purpose it is received, unless it is being received in a very limited way. I should prefer to rule on your objection, Mr. Seymour, in connection with a question
328 or an exhibit which precisely raises the point.

Mr. ISSERS. I will ask the question.

Mr. SEYMOUR. I think the way the question arose was, there was a question which raised the problem and I objected.

Mr. ISSERS. I will ask one question and then your Honor can rule.

By Mr. ISSERS:

Q. Did you have any conversations prior to April 1, 1939, with the Bausch & Lomb people with respect to the price at which Soft-Lite Company would sell Soft-Lite lenses to wholesalers?

Mr. SEYMOUR. I object to that, if your Honor please, as not within the scope of the complaint.

The COURT. If there is anything further you want to add to the argument we had yesterday, I will be glad to hear it.

Mr. ISSERS. I have something, your Honor.

Mr. SEYMOUR. I would like to say this: considering the complaint further along the lines of construction which your Honor suggested, it seems to me that that construction is inadmissible, by reason of the fact that in the last sentence of paragraph 12, after specifying the conspiracy with which the case is concerned, the Government alleges, "such contracts, combinations, and
329 conspiracy to restrain interstate trade and commerce in tinted lenses are hereinafter set forth." Therefore paragraph 13 cannot go beyond the conspiracy alleged in paragraph 12, but must be a mere amplification of that conspiracy.

The COURT. Do you take the word "hereinafter" to mean immediately hereinafter in the next succeeding paragraph?

Mr. SEYMOUR. In all the succeeding paragraphs.

The COURT. Why may that not mean hereinafter set forth in succeeding paragraphs without limiting the number of the succeeding paragraphs to other conspiracies?

Mr. SEYMOUR. I don't think the normal meaning of the pleading, normal meaning of the reference back, "such contracts," that is,

it would be very unusual it seems to me to allege the conspiracy and refer to it by the use of the word "such" without saying in paragraph blank hereof, and still leave 13.

The COURT. How would you go about it if you were doing it really and wanted to express your intention?

Mr. SEYMOUR. In the first place, it seems to me on further consideration that it can not be that paragraph 12 was a so-called old-fashioned conspiracy, to use your Honor's words of yesterday, and paragraph 13 an Ethyl conspiracy, because paragraph 12 is an Ethyl conspiracy. Paragraph 12 deals with a conspiracy
330 with respect to the distribution system and presents that problem. There are not two conspiracies here. There is a distribution conspiracy; there is not any manufacturing conspiracy, there is a distribution conspiracy; there is not any price-fixing conspiracy, except as part of the distribution conspiracy.

Now if I were, and I hesitate to suggest how I would plead it, but in answer to your Honor's question, if I were trying to plead two conspiracies I would follow the normal rules of pleading and plead them in separate——

The COURT. Separate counts?

Mr. SEYMOUR. Separate causes of action, and the fact that they are not so pleaded is strong evidence that it was not the intention to charge two conspiracies. But I think I have said enough. I do object as not within the scope of the complaint, and press my objection.

Mr. ISSEKS. What have you to say, Mr. Isseks?

Mr. LEHRICH. I join in that objection. I would like to have the record note that.

The COURT. Of course we have a general stipulation that objections taken by either Mr. Seymour or Mr. Lehrich inure to the benefit of the other.

Mr. ISSEKS. I would like to point out some general considerations first and then be more specific. In the well known Swift
331 case, where there was a demurrer to the complaint, Mr. Justice Holmes pointed out that in these kind of cases there should be broad latitude, and similarly Judge Woolsey, in this court, not in this courtroom, but in a motion for a bill of particulars in the Sugar Institute case, after quoting from Mr. Justice Holmes, pointed out that it must be remembered that conspiracies of this kind are so vast that to set them forth involves in each case a new problem of pleading.

I want to point out a specific case identical with this. When we filed this complaint, we filed three others. I am going to mention one other, namely, the Univis case, which involved a distribution system of patented lenses. There is another case, the

Panoptik, but I won't mention that because it has not been tried as yet. The Univis case came on before Judge Galston in this court and there I have a copy of the complaint, and if you look at it you will see it is almost word for word; that paragraph 15 is like paragraph 12 here. The draftsman was the identical gentleman, one of my associates, who did the drafting, and the rest of us went over it, and we charged in the general language of the statute and we charged language identical with this complaint; a little different in small things because there it was a patented article, and the matter came up before Judge Galston——

331-A The COURT. Is number 16 comparable to 13?

Mr. ISSEKS. A little different, but it is comparable. I was not there at the trial—no apologies though—I was senior counsel but I could not be in two places. I had to try a case in Toledo, Ohio, and my associate tried it here, but you will see it is comparable and just a little different because the problem was different. But the issue came up like this issue before Judge Galston.

332 My associates Mr. Glickfield and Mr. Disney—Mr. Disney is not here—having proved matters relating to the distribution system, offered something wholly different. They offered to show that the defendant in that case tried to stop another manufacturer, the Titmus Optical, from engaging in that business. There it was the distribution system. Well known counsel, Mr. Toulmin, from Dayton, Ohio, objected, and I have the record of the colloquy here, on the very same grounds stated now. My associate Mr. Glickfield did not rely on 16 there, but on 15, and stopped with "District of Columbia." He said where you have a general allegation, and while it is true it is in the nature of a bill of particulars, the allegation is there, they are restraining trade and violating the antitrust law. I have the record of that here and your Honor can take it if you wish.

The COURT. How did the Court rule?

Mr. ISSEKS. The Court allowed the evidence, and in the Court's opinion handed down yesterday he said the practice should be restrained.

The COURT. Did he write anything on this precise point?

Mr. ISSEKS. No; I am sorry. I have the ruling here. He said he would take it for what it was worth, and mentioned the

333 practices, which have nothing to do with the general distribution system, and held that an injunction should issue as to those practices.

The COURT. There was no amendment of the pleadings there?

Mr. ISSEKS. No, sir.

The COURT. Very well. I am prepared to rule on it.

Mr. ISSEKS. I have finished my argument.

The COURT. I will overrule the objection.

Mr. SEYMOUR. Exception. I understand that I won't need to make this same objection to anything along this line, and that your Honor will consider that this is a continuing objection as not within the complaint. Your Honor's ruling will be the same, I assume, and I have an exception.

The COURT. You are quite right. This being an equity case, when we come to the findings you can draw the facts to the Court's attention again, stating that this line of evidence should have been excluded and object to the findings on the ground that if excluded those findings would not obtain.

Mr. ISSEKS. I have a request to make, and I will apologize before I start.

The COURT. Why do you need to apologize?

Mr. ISSEKS. You will see why in just a moment. Unfor-
334 tunately we estimated the trial of this case would take a very short time. Based on that we had subpoenaed some gentlemen from all parts of the United States. One gentleman came here on Tuesday from Chicago, another gentleman came here from New Orleans on Tuesday; there is one from Washington. We have today men from St. Louis, Kansas City and Austin. Knowing that we are going to have a recess Monday and Tuesday, and these gentlemen all being from other parts of the country, and being subpoenaed and having no interest in the outcome of this litigation, if your Honor will indulge me and let this witness step down I would like to put them on out of order. They won't take long. The first one will take about 15 minutes on the direct, the second a half hour, and the third will take a substantially short time.

The COURT. Is there any objection?

Mr. SEYMOUR. I have not any objection. I do not know who these witnesses are, however.

Mr. ISSEKS. I will be glad to state who they are.

Mr. SEYMOUR. But your Honor will perhaps indulge us if their testimony goes in by giving us some reasonable opportunity to prepare for their cross-examination while they are here.

Mr. ISSEKS. Oh, sure; I will be glad to do that. They will be short, and they will be here the rest of the day and I am sure will stay tomorrow if necessary.

335 The COURT. Your point is that you want to postpone the cross-examination and not press that at the conclusion of their direct?

Mr. SEYMOUR. That I do not know. I would have to hear the testimony and then make an application in each case. I would hope that we could work that out to the satisfaction of the Court.

The COURT. And we have Friday, anyway.

Mr. ISSEKS. Yes; I was going to suggest, your Honor, if by chance these people are stuck here that your Honor might be kind enough to sit on Saturday. They have no interest in the outcome of this suit, except as citizens.

The COURT. It will accord with my convenience if it does with counsel's.

Mr. SEYMOUR. I do not know how long these gentlemen will take.

Mr. ISSEKS. They will be very short.

The COURT. Very well, there being no objection we will permit the examination of those witnesses out of order.

Mr. ISSEKS. The Government will call Mr. Engleman.

The COURT. Can you give the present witness an idea how long he should stay around here?

Mr. ISSEKS. Well, he need not be here today, although I have heard counsel say that he expects to remain here.

336 The COURT. Then the witness can find out whether it is necessary for him to remain now, or can communicate with his counsel during the luncheon recess.

The WITNESS. No; I will stay here.

Mr. ISSEKS. My associate Mr. Glickfeld, your Honor, will examine.

LAWRENCE W. ENGLEMAN, called as a witness on behalf of the Government, being duly sworn, testified as follows.

Direct examination by Mr. GLICKFELD:

Q. Mr. Engleman, you are associated, are you not, with the Mayflower Optical Company of Washington, D. C.?—A. That is right.

Q. In what capacity are you associated with that company?—A. As assistant manager.

Q. And what is the business of that company?—A. Strictly a prescription optician.

Q. You sell only to the consuming public?—A. That is right.

Q. Who owns that business, sir?—A. It is owned by my father.

Q. And how long has that company been engaged in such business?—A. Ten years.

Q. Do you know if the company was a Soft-Lite

337 licensee?—A. Yes, sir.

Q. And how long was it?

The COURT. I did not get an answer as to whether it was or not. There is only an answer that he knows.

Q. Was it a licensee?—A. Yes, sir.

Q. For how long was it a licensee?—A. Well, for ten years, ever since we opened, except for the several months while we were applying for it.

Q. What kind of license did the company have?—A. At the time just prescription, and now after the first two years we started grinding, so we got the complete license.

Mr. LEHRICH. I understand the answer is that they are still a licensee.

The WITNESS. That is correct.

Q. Did there ever come a time when the license granted by the Soft-Lite Company was revoked?

Mr. SEYMOUR. If your Honor please, I object to testimony with respect to revocation as against Bausch & Lomb and our clients, in the absence of any foundation being laid for their participation.

The COURT. I will note your objection.

Mr. SEYMOUR. And that may continue with respect to his examination, your Honor.

338 Mr. LEHRICH. Your Honor, I do not want to seem to be technical, but I do think that since revocation, as has appeared in the evidence, was in writing, if Mr. Glickfeld has the documents it will save time if he will just present them.

The COURT. I assume that he will proceed to do that. This was a leading question which will get him into that.

(Government's Exhibit 105 marked for identification.)

Mr. GLICKFELD. Your Honor, I should like now to offer this document in evidence.

The COURT. You offer Government's Exhibit 105 for identification in evidence?

Mr. GLICKFELD. Yes.

Mr. LEHRICH. We would like an opportunity to read it.

The COURT. Yes.

Mr. GLICKFELD. For the record, your Honor, this is a territorial comment submitted by J. H. Vernon, dated received January 17, 1938.

The COURT. Received by whom?

Mr. GLICKFELD. I assume it is by the Soft-Lite Lens Company, because it is directed to Nat Singer. "For N. S. and R. G. L."

339 The COURT. There being no objection to that construction, I will assume that is what it means.

Mr. SEYMOUR. I object to this document as against Bausch & Lomb and the other Bausch & Lomb defendants. I call attention to the fact that the document relates among other things to this gentleman's company apparently only in the last two paragraphs. The balance does not seem to have anything to do with them.

The COURT. There will be no objection to admitting it as against the defendant Soft-Lite in any event.

Mr. SEYMOUR. I make no such objection.

The COURT. You have your general objection, however, to the admissibility as against Bausch & Lomb.

Mr. SEYMOUR. Yes.

The COURT. As to which I have reserved decision pending proper connection.

Mr. LEHRICH. No objection to the admission of that document.

The COURT. It will be received.

(Government's Exhibit 105 for identification marked in evidence.)

(The last question was read as follows):

"Q. Did there ever come a time when the license granted by the Soft-Lite Company was revoked?"—A. Yes.

Q. And do you recall the approximate date of that revocation?—A. Approximately four years ago.

340 Q. Do you recall having had any conversations with a representative of the Soft-Lite Lens Company concerning that revocation?—A. Yes; at the time the license was revoked, when their representative called on us.

Q. Who was that representative?—A. Mr. Harry Vernon.

Q. Where did he call on you?—A. At the place of business.

Q. Who was present at that time?—A. My father and I.

Q. Will you state the conversation that took place at that time?

Mr. SEYMOUR. If your Honor pleases, it seems to me that this goes beyond any connection with Bausch & Lomb. I object to it as incompetent, irrelevant and immaterial as against the Bausch & Lomb defendants. Even if it were connected I would object to it.

The COURT. I will overrule the objection in that regard.

A. Let me have the question again; I am sorry.

Q. (Read by reporter.) A. Mr. Vernon, the representative, called upon us and stated that our prices were not the prevailing prices that they were having there with several other prescription opticians, and requested us to raise it up to the prevailing prices prevailing in Washington, D. C., at the time.

Q. Did he tell you what the prevailing price was?—

341 A. Well, we asked him what the prevailing price was, because we were under the impression we were charging prevailing prices.

Q. Were those the prices you were supposed to be charging to your customers?—A. That is what he stated; yes.

Q. Was anything else said at that conversation?

Mr. SEYMOUR. If your Honor pleases, I am not quite sure what is the most satisfactory method to preserve this point. I presented

my objection in the first instance. Apparently this testimony relates to that class of question as to interstate commerce that I mentioned in my argument yesterday. I object to testimony with respect to discussions about the prevailing price, or the local price, upon the ground that that involves no interstate commerce and is not within the language of the Sherman Act.

The COURT. But not for the reason that it is beyond the scope of the complaint?

Mr. SEYMOUR. No.

The COURT. I will overrule you on that.

Mr. SEYMOUR. Exception. I do not by that specific objection waive my general objection.

The COURT. Very well, that you have a reservation on.

342 Q. I think my last question was, do you recall any other conversation which took place at that time?—A. Well, as I was stating there in regards to the price there, we were under the impression we were charging the prevailing price, but he called our attention to the fact that we were not and suggested that we charge the prevailing price there, and at the time we did not think much of raising the price up, because after all the doctors we dealt with objected to the higher prices. We told him we would refuse at that time. So then about a week later we got a letter from the Soft-Lite Company stating that they were revoking our license.

Q. And did you have any further conversations with Mr. Vernon concerning the revocation of the license?—A. Not until about a month later, when he was back in Washington again. I think we had written him a letter in regards to the fact we did want to sell Soft-Lite lenses and we would consider—we would like to talk to him again. So the next time he came to Washington he gave us a buzz, and one of our representatives who worked with us, who has a personal interest in the business—not financial but a personal interest——

Mr. SEYMOUR. I object to this, your Honor. He is testifying to the contents of a document without the production of the document.

343 The COURT. So far he says that he telephoned Mr. Vernon or Mr. Vernon telephoned him. That is the way I translate the words "gave us a buzz."

The WITNESS. Yes.

Mr. SEYMOUR. He said he wrote.

The COURT. Yes; he said he wrote a letter, and if you want it produced call for it.

Mr. SEYMOUR. I move to strike out that testimony as not in response to the question, and describing the contents of a written instrument.

The COURT. The fact that the answer is not responsive is an objection that I take only from the questioner and not from anybody else, unless irrelevant. If the objection refers to a letter I will certainly let the witness testify that he sent or received a letter.

The WITNESS. We wrote the letter, your Honor.

The COURT. If you object to a statement of the contents on the ground it is not the best evidence, I will go along with you, if that is your specific objection.

Mr. SEYMOUR. Yes.

The COURT. Very well, I will exclude it. Strike out so much of the answer as describes the contents of the letter, unless the proper foundation be laid for introducing secondary evidence.

The WITNESS. Well, Mr. Vernon called us when he arrived back in Washington again, and we met him at the Hamilton
344 Hotel in Washington, and I apologized for the incident and explained to him that we talked a little too hasty and we would like to have our Soft-Lite lens business back again and we would charge prevailing prices.

Q. What did he say?—A. He said he is sure he could see to it, because he had found us a very ethical house, and he was sure we could get it back again, and we did in a week or ten days.

Mr. GLICKFELD. I am through with the direct examination. I would just like to call your Honor's attention to the last two paragraphs in the exhibit offered by the Government.

The COURT. Yes; I have already read those.

Cross-examination by Mr. LEHRICH:

Q. Mr. Engleman, I think you said that your company has been a licensee for about ten years except for this period of interruption that you talked about?—A. Yes, sir; that is right.

Q. During that period the Soft-Lite Lens Company furnished you with price lists, did it not?—A. That is right, sir.

Q. Those were price lists giving the prices——A. The wholesale price, if I may interrupt you. I do not ever recall seeing a retail price list.

Q. By wholesale price list you mean a list showing the prices you were expected to pay the wholesaler when you bought the lens?—A. That is right.

344-A Q. At any time during that entire period did you ever receive from Soft-Lite Lens Company or from anybody else a price list suggesting or directing your company to charge certain fixed prices—A. Not to my knowledge.

Q. Prices to the consumer?—A. No, sir; not to my knowledge.

345 Q. So that so far as you know, the Soft-Lite Lens Company had no direction that it had issued to you as to prices to be charged to the consumer?—A. No, sir.

Q. You say it was three or four years ago that this incident occurred?—A. Yes, sir.

Q. Your company was handling Soft-Lite lenses together with a general line of optical merchandise and you were dispensing the merchandise to patients recommended by physicians?—A. That is right, sir.

Q. Didn't Mr. Vernon tell you, in substance, that reports had come to Soft-Lite Lens Company that your company had gone into a cut price field?—A. No, sir.

Q. Didn't Mr. Vernon tell you that reports had come to Soft-Lite Lens Company that you generally had lowered your prices on all merchandise you were selling?—A. No, sir. If I may speak up at this particular time——

Q. Oh, yes. Go ahead.—A. The prices had not been lowered. We have charged the same price that had been charged in Washington for twenty years. We have never lowered our prices below.

The COURT. Counsel asked you whether that is what Mr. Vernon told you.

The WITNESS. No, sir.

Q. When you charged the price that you say you were charging on Soft-Lite lenses for ten years, you fixed
346 that price to the consumer, is that right?—A. No, sir. Well, I mean we set the price. What I mean and meant before, that is the price that they all charged in Washington at the time and we met that price.

Q. When you started to do business after you were appointed a licensee and you made inquiries in Washington as to what competitors were charging——A. No, sir; we did not make inquiries because my father had been located with another firm in Washington for eighteen years and he continued the same price level.

Q. Then when he opened his business he had some knowledge——A. That is right; yes, sir.

Q. What his former employer or the firm with which he was formerly connected, had charged for Soft-Lite lenses?—A. Yes, sir.

Mr. SEYMOUR. I assume that the objection as to intra-state commerce will be regarded as continuing.

The COURT. That is quite right.

Q. And then when you opened your business you continued to charge that price?—A. Yes, sir.

Q. And Soft-Lite Lens Company at no time gave you any indication or help in arriving at that price?—A. No, sir.

Q. It was entirely a matter of your own judgment?—A. Yes.

347 Q. I think you said that was the price generally charged by houses of your type in Washington?—A. Yes, sir.

Q. And that was your father's impression?—A. Yes, sir.

Q. And that is why he charged that price?—A. Yes, sir.

Q. When Mr. Vernon came to see you and your father, he corrected that impression, didn't he?—A. Yes, sir.

Q. And he pointed out to you that your prices were lower than those generally prevailing in the community——A. Other prescription opticians.

Q. Other prescription opticians?—A. Yes, sir.

Q. And you said you did not feel you wanted to go along with those prices?—A. Yes, sir.

Q. You wanted to sell cut price?—A. No, sir.

Q. As compared to those?—A. No, sir; not cut price. If they raised their prices—they raised their prices.

Q. Now afterwards this price prevailed for some time?—A. That is right, sir.

Q. Set by them and by you?—A. Yes, sir.

Q. In your individual establishments?—A. That is right, sir.

Q. There was a time when several others increased their prices?—A. That is right, sir.

Q. And you remained——A. The same; yes, sir.

Q. And then you went out soliciting business?—A. Yes.

Q. From physicians, pointing out that you were under-
348 selling the others?—A. That is right, sir.

Q. Mr. Vernon told you that he felt that that was a business objectionable to Soft-Lite, a policy objectionable to Soft-Lite for procuring business, in substance?—A. Yes, sir.

Q. And he asked you to discontinue featuring a lower price as a method of getting business, is that correct?—A. Yes, sir.

Q. And you told him you would not do it?—A. That is right.

Q. And then he told you under those circumstances he would have your license revoked?—A. Yes, sir.

Q. And he did? A. Yes, sir; that is right.

Q. And you then changed your mind about the method of soliciting physicians after some time?—A. Yes, sir.

Q. And you approached Vernon?—A. Yes, sir.

Q. And you asked to have your license reinstated and it was reinstated?—A. Yes, sir.

Q. And did the Soft-Lite Lens Company notify you by a price list communication memorandum or anything else as to any price you would charge?—A. No, sir.

Q. You determined that yourself?—A. Mr. Vernon just suggested the prevailing price in Washington.

Q. But you determined what you wanted to get for your Soft-Lite lenses based on your overhead, your type of
349 service——A. And the same as the prevailing price in Washington.

Q. You did not want your competition to get ahead of you so you more or less followed them?—A. That is right.

Mr. LEHRICH. That is all.

ROY M. WAHLGREN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. ISSEKS:

Q. Will you please tell the Court where you live, sir?—A. In Chicago, Illinois.

Q. And with what company are you now connected, sir?—A. The House of Vision, Belgard-Spero, Inc., is the full name.

Q. And where is that located?—A. In Chicago, 30 North Michigan, the main office.

Q. What is the nature of its business, sir?—A. Wholesale dispensing opticians.

Q. How long have you been in the wholesale optical business?—A. I started in August of 1904.

Q. With what company, sir?—A. With the Columbian Optical Company of Omaha, Nebraska.

Q. And later on that company was organized into what company?—A. Later on that company may have been
350 reorganized.

Q. You became connected with another company?—A. I became connected with another company.

Q. What company was that?—A. The Omaha Optical Company.

Q. Who was the head of both of those companies while you were with them?—A. When I joined the Columbian Optical Company the manager was Mr. Elwood Riggs, who later organized the Omaha Optical Company and took me with him at the time.

Q. And the company's name was changed to what later on?—A. To the Riggs Optical Company.

Q. And you have been in the courtroom, have you not, from time to time during the last few days?—A. Yes.

Q. The same Riggs Optical Company has been referred to in the courtroom?—A. That is correct.

Q. Unless the name has been changed in connection with a reorganization.—A. That is right.

Q. Did you at one time become president of that company?—A. I did.

Q. What year was that?—A. I believe in 1925.

Q. How long did you continue with that company, sir?

The COURT. You mean the Riggs Optical Company?

Mr. ISSEKS. Yes sir.

A. You mean after 1925?

Q. Yes, sir.—A. Until, I believe, in November 1930.

351 Q. During that period approximately what was your salary?—A. $35,000 a year.

Q. And during that period, that five-year period, who controlled the company?

Mr. SEYMOUR. I object to that as calling for a legal conclusion.

The COURT. I will sustain your objection.

Q. What company was the Riggs Optical Company affiliated with, sir?—A. With Bausch & Lomb Optical Company of Rochester, New York.

Q. You know the defendant Singer, do you not?—A. Very well.

Q. How long have you known him, sir?—A. I believe I first met him in 1922 or 1923. I am not certain as to that date.

Q. Under what circumstances, sir?—A. He called at the office of the Riggs Optical Company in Omaha in endeavoring to interest my company in two of his products, Thin-Lite lenses and Soft-Lite lenses.

Q. What was the name of the company at that time, sir?—A. The Optical Service Company or Corporation—I am not sure which.

Q. And what did you tell him, sir?

Mr. SEYMOUR. I object to that, if your Honor please;

352 what the witness told Mr. Singer at a time in 1922, as irrelevant and immaterial and incompetent against Bausch & Lomb and Bausch & Lomb defendants.

The COURT. What is the relevance of this conversation?

Mr. ISSEKS. Your Honor, it is the beginning of what transpired later on——

The COURT. Is it the foundation you are laying for a background?

Mr. ISSEKS. That is right. It shows how Mr. Singer got to Bausch & Lomb. This gentleman was responsible.

The COURT. It is purely preliminary background. I will let it in as such but I hope you are not going to elaborate that.

Mr. ISSEKS. The background theory is well settled in half a dozen cases.

The COURT. Within reasonable limits I will let you put it in as a connective narrative.

Mr. SEYMOUR. But it goes in against the person whose background is directly material, subject to connection in all respects.

The COURT. That you have a reservation for.

Mr. Isseks. We offer it only for that purpose.

353 Q. Tell us what you told Mr. Singer after he tried to interest you in his two devices of lenses?—A. Well, we had several meetings with him, but when I had become convinced of his sincerity and earnestness, I suggested that in Thin-Lite he had a product that had no great value because only one case in ten-thousand, perhaps required that type of lens, but I thought he had a good product in Soft-Lite, but that we would not be interested in taking it on unless he arranged to have the glass manufactured in America and the lens ground by some one of the better known manufacturers.

Q. Did you make any suggestions to him as to where he could go?—A. Yes, I did. I suggested the Bausch & Lomb Optical Company of Rochester.

Q. What did he say?—A. He said that it would be useless for him to go to Bausch & Lomb unless he would be able to assure them of substantial distribution and that if I would work with him, assuring Rochester, or the Bausch & Lomb Optical Company, that the Riggs Optical Company would get behind the product, he probably could interest them; if I would do that he probably could.

Q. Did you then have any further conferences with Mr. Singer and someone else?—A. I believe that I got in touch with Dan Hubbell, who was then an officer of the White-Haines Optical Company of Columbus, and who was the second largest of the independent companies.

354 Q. Whose was the first at that time?—A. The Riggs. (Continuing.) And suggested that we attempt to influence Bausch & Lomb to work with Singer.

Mr. Seymour. I move to strike out the answer, the conversation between this gentleman and Mr. Hubbell, as not competent.

The Court. Sustained.

Q. Was Mr. Singer present at the time of the conference?—A. I am not sure as to that. I do not believe that he was at the first conference.

Q. Did you have a conference at which you and Mr. Singer and Mr. Hubbell were present?—A. Yes, we had several.

Q. A conference relating to going to Rochester?—A. Yes.

Q. Tell us the conversation?

Mr. Seymour. I object to that also as incompetent, irrelevant, and immaterial against my clients. This gentleman had no connection with the company that was then affiliated. This is a date prior to the first date mentioned in the complaint and prior to affiliation.

Mr. Isseks. I stipulated that.

The COURT. Yes; I am taking it for narrative purposes only, but this is a conversation at which Mr. Singer, who is a defendant in this case, was present.

Mr. ISSEKS. That is right.

355 The COURT. And you were present, and the head of the White-Haines Company?

The WITNESS. I believe that this conference was held in Chicago at the Old Colony Club. I am not certain as to that. It might have been held in Columbus, Ohio, at the office of the White-Haines Optical Company.

Q. The three were present?—A. Yes.

Q. Please tell us what was said.—A. Well, so far as I was concerned, I no doubt told Dan that I saw great possibilities in Soft-Lite, that my company had been successful in developing a large volume of business on another type of tinted lens on which our source of supply had later been cut off because of the first war, and that I thought we had a very profitable product and suggested that he or his company get behind it, and that we work with Nat Singer in interesting Bausch & Lomb to make the glass and grind the lenses.

Q. Did a time come when you and Mr. Singer went to Rochester?—A. A time came when we met there.

Q. You met Mr. Singer there? Anybody else? Mr. Hubbell there, too?—A. Yes; Mr. Hubbell was present.

Q. Who did you see there, the three of you?

Mr. SEYMOUR. I wish the time would be fixed.

The COURT. Yes.

356 Mr. ISSEKS. Surely. I will ask the witness. I intended to.

Q. Approximately when was this?—A. I would say a very few months after I had, or perhaps a few weeks after I had had this initial conference or discussion with Dan Hubbell.

Q. What year was that?—A. Well, your Honor, I was not sure as to whether '22 or '23 or early in '24. I cannot place the time within a year.

Mr. SEYMOUR. I think we are entitled to have the time fixed.

Mr. ISSEKS. We are trying everything. I had representatives from the FBI go to Rochester yesterday and try to get records from the hotel and we have done everything we can to find the time. I would like counsel to produce any documents they have which would show the time. I am very much interested.

The COURT. In any event, the witness says 1922, 1923 or possibly early in 1924. If that is the best he can do, I will take it.

The WITNESS. If my memory can be refreshed by showing me when Bausch & Lomb first agreed to make Soft-Lite glass, I can come more nearly fixing the time.

Q. I show you Government's Exhibit 1, which is a memorandum dated June 11, 1924, written by Mr. Hammel, and to which
357 is attached a list of Service Optical Corporation customers, meaning Optical Service Corporation customers, and retail licensees, and which relates, as I understand it, to the grinding of lenses by Bausch & Lomb for Optical Service Corporation and ask you to look at the date of that and see whether that refreshes your recollection as to approximately when you had the first meeting with Mr. Singer and Mr. Hubbell in Rochester?—A. This is dated June 11, 1924. I would say several months before that time; early in 1924.

Q. Thank you. Now you tell us who you saw in Rochester; you three gentlemen?—A. Well, we first met Mr. Joe Hammel. I believe we talked to Mr. Drescher, who was then quite active——

Q. You mean the elder Mr. Drescher, Mr. William Drescher?—A. Yes; Mr. William Drescher, and before we were through—I think we remained there a day or two—others were called in.

Q. Do you recall their names?—A. Mr. Edward Bausch, one Mr. Herbert Eisenhart, Mr. William Bausch, and possibly others. In any event, before we left we talked to no less than seven or eight of the Bausch & Lomb people.

Q. Was there more than one conference that you attended during that period with those gentlemen?—A. I think that over a period of several months there was no less than two or three conferences.

358 Q. You went away from Rochester and came back again?—A. I went from Omaha to Rochester and eventually returned to Omaha. Where I went from Rochester I do not know.

Q. At all these conferences were Messrs. Singer and Hubbell present?—A. I rather think so.

Q. That is your best recollection?—A. Yes.

Q. Can you distinguish what happened at the first conference and the second and the third, after the expiration of seventeen years?—A. No, I cannot.

Q. In the absence of a piece of paper?—A. I cannot.

Q. Have you made a diligent search to find any documents which would refresh your recollection?—A. I did not need to make any search because any papers that I had were left in the files of the Riggs Optical Company when I left the company.

Q. In 1930?—A. In 1930.

Q. Tell us your best recollection as to what transpired at the conference at which you, Mr. Nat Singer, Mr. Hubbell, and representatives of Bausch & Lomb were present, and if you can tell us who was present, please do so?—A. I can say positively that during one or more of those several meetings all of the men I

have mentioned were present, or were talked to, one or more of them; and on the several visits we talked to all of them.

359 Q. Tell us what transpired; what was said by you and Mr. Singer or Mr. Hubbell and these gentlemen from Bausch & Lomb, and if you recall who said it, will you please tell us?—A. Well, I can well recall my having told the Bausch & Lomb people of the possibilities that I saw for the development of profitable Soft-Lite business. I told them no doubt what the Riggs Optical Company had accomplished with another tinted lens, and I told them undoubtedly, because that is one of the reasons I went there, that the Riggs Optical Company would get actively behind the sale of Soft-Lite lenses.

Q. Did anybody at Bausch & Lomb say anything?—A. Well, undoubtedly they did not sit there mute. They must have.

Q. What is your recollection as to what they said?—A. Well, one of the things that was very much in their minds was ——

Mr. SEYMOUR: I object to what was in their minds.

The COURT. Sustained.

Q. What was said. You can only testify what was said.—A. All right.

Q. And who said it, if you remember?—A. It was asked by one or more of those men——

Q. Bausch & Lomb people?—A. Yes, whose names I have mentioned, as to whether or not Nat Singer might be a safe

360 man to deal with; he was an unknown quantity, and they wanted to be assured that their policy of charging the same price to all these other—alleged policy—whether they lived up to it or not I do not know——

Mr. SEYMOUR. I object to that and move to strike it out.

The COURT. If that is what they said, I will overrule your objection.

Mr. SEYMOUR. Does he mean they said "their alleged policy"?

The COURT. Let us get down to the precise terms of the conversation.

The WITNESS. I corrected myself because I only knew what they said. I never knew that their policy was to sell all customers the same price.

The COURT. Let us omit all that. Just state what the Bausch & Lomb people said.

The WITNESS. Well, boiling it down, the Bausch & Lomb people said that they could only go into this deal with Nat Singer, or the Optical Service Company, if they could be assured that the product that they manufactured would not be used as a football and the prices set would be maintained.

Q. Did they say anything about agreeing to manufacture for Optical Service Corporation.—A. On which one of these
361 meetings I do not know, but I do know that they did say they would manufacture.

Q. Was there anything said about grinding any French glass which the Optical Service Corporation had on hand?—A. I believe that there was. I am not certain as to that. I believe that they did for a time grind French glass.

Q. I am talking about what was said there. That is all we are interested in here, what was said at the conversation.—A. I cannot recall definitely.

Q. Was there anything said at that time about Bausch & Lomb manufacturing lenses for the Optical Service Corporation only?—A. Why, yes.

Q. Who said it, if you recall?—A. Well, Mr. Hammele for one. I think that it was agreed by several of them, several of those seven or eight men whom we interviewed during those several visits.

Q. When someone at Bausch & Lomb said something about not making a Bausch & Lomb product a football in the industry, what was said by either Mr. Singer or you or Mr. Hubbell?—A. Well, Mr. Singer assured one or more of these gentlemen that he would operate on an established price policy and that the product would not be used as a football.

Q. Was anything said during these conversations about the method of distribution of the product which would be
362 manufactured by Bausch & Lomb and distributed by the Optical Service Corporation?—A. As to the method of distribution?

Q. Yes, sir—A. I do not think so at these earlier interviews. Later that was discussed.

Q. When you say later, see if you can fix the time in reference to this Government's Exhibit 1, which is dated June 11, 1924, and Government's Exhibit 2, which I will show you, which is dated July 30, 1924, and I direct your attention to the fact that Government's Exhibit 1 has attached to it a list of Optical Service Corporation customers and a list of retail licensees, and ask you if that refreshes your recollection,—and look at Government's Exhibit 2—as to approximately when, in relation to those dates, there were conversations with the Bausch & Lomb people regarding the method of distribution of Soft-Lite lenses?

Mr. Seymour. I think the first question is whether the witness saw that paper before.

The Court. That does not make any difference.

Q. Did you ever see this paper before?—A. This?

of the conspiracy that they should be fixed by the affiliates. Here you prove that the affiliate fixed the price, but that would not be sufficient to sustain this allegation of the complaint.

Mr. Isseks. I submit, your Honor, we have proven that there was a conspiracy originally between Bausch & Lomb and Soft-Lite with regard to a distribution system, and I submit that after Riggs became an affiliate the acts of the affiliate are binding, not only because they are an affiliate, but because they are a wholesaler of Soft-Lite Lens Company or Optical Service.

The Court. I want to get it clear in my mind. Are you trying to charge the defendants with action by Riggs by reason of the fact they are affiliates, or are you trying to establish that it was part of the conspiracy that the wholesalers would fix the price in the locality? Those two things are quite distinct.

391 Mr. Isseks. We allege the second.

The Court. Namely, that it was part of the scheme?

Mr. Isseks. That is right.

The Court. That the general scheme of distribution was that wholesalers would fix the local price?

Mr. Isseks. Yes, and that is alleged in Paragraph 21.

The Court. I say in order to prove that you would have to prove it was part of the conspiracy or plan. It would not be sufficient to prove that the wholesalers did it.

Mr. Isseks. It seems to me, your Honor, if we prove the acts—and we cannot in these cases, as your Honor knows, get a written document on the most essential parts of the case—it seems to me the fact that they did it and that it was the regular custom to do it is relevant. But I will try to bring it out. I will ask him what the conversations were and then what was done, during the period that he was executive head, with regard to the office managers.

Mr. Seymour. I object to the question about conversations as incompetent, irrelevant, and immaterial as against the Bausch & Lomb defendants. That is along the lines of the general objection.

Mr. Isseks. Your Honor ruled on the last question whether he talked to Bausch & Lomb about price policy.

392 By Mr. Isseks:

Q. The question is whether you talked to anybody of Bausch & Lomb at a meeting at which Mr. Singer was not present, in regard to Soft-Lite policy?

The Court. He answered that yes.

A. Yes.

Q. What was the conversation?

Mr. Seymour. Same objection.

Q. If you can remember when and who was present, please tell us. The approximate date and who were present.

Mr. SEYMOUR. The same objection.

The COURT. Overruled.

A. Well, I have one very definite recollection. During the early part of 1930 in Chicago with Herbert Eisenhart and Thomas Taylor.

Q. Let us distinguish as to who they were. Mr. Eisenhart is a defendant in this case and president of Bausch & Lomb today.—A. That is right.

Q. And Mr. Taylor at present is treasurer?—A. That is right.

The COURT. And who were they in 1930?

Mr. ISSEKS. I am sorry, your Honor, I do not know, but counsel will tell us I am sure. They were executives.

The COURT. Were they executives of Bausch & Lomb at that time?

393 Q. Were they executives of Bausch & Lomb at that time?—A. They were.

Q. Where was it? You say you have a definite recollection.

The COURT. He said in Chicago.

Mr. ISSEKS. I want to have the place. I am anxious to have the witness be as accurate as he can, because I want an opportunity to check on everything that he says, and everybody else can.

The WITNESS. At Chicago.

Q. Where?—A. I believe at the Palmer House.

Q. Tell us what happened.—A. The subject came up, was brought up by Herbert Eisenhart or by Tom Taylor, as to why the Riggs Optical Company was particularly pushing Soft-Lite lenses, and my answer to that was because it was one of our most profitable items. There was no discussion then as to what the price should be.

Mr. SEYMOUR. I object to the witness stating what was not discussed.

Mr. ISSEKS. I move to strike it out.

The COURT. Granted.

Q. Was there anything else said?—A. No; I think that was substantially all.

Q. Any other conversations that you can recall with the Bausch & Lomb executives, at which Mr. Singer or any other representative of Soft-Lite Lens Company or its pre-

394 decessor was not present?—A. I think I have already testified to that, that such conferences occurred on numerous occasions between the years 1925 and up to the summer of 1930, where prices were discussed.

Q. Soft-Lite?—A. Yes.

Q. And prices from the Soft-Lite Company to the wholesaler?—A. Correct.

Q. And from the wholesaler to the retailer?—A. Correct.

Q. From the retailer to the purchasing public?—A. I don't think that ever came up.

Q. Now did you have any conversations with any one of the managers of the Riggs Optical Company while you were an executive, with regard to the prices at which Soft-Lite lenses should be sold from your company, Riggs, to the retailers?

Mr. SEYMOUR. I object to that as incompetent, irrelevant, and immaterial.

The COURT. Sustained. Let me say before we get into this particular point, that you have apparently abandoned the last question. The mere statement of the witness that prices were discussed, while admissible, is not of very much weight. If you are going to prove any case here you have to show me what kind of discussions were had. I might sit around here and discuss with you the price of U. S. Steel on the stock market, but
395 that is not a violation of any statute or within the scope of your complaint, either.

Q. Let us go back. State the conversations at which Mr. Singer was present with you and Mr. Hubbell alone, the three of you. You testified the prices were discussed, as to prices from the Soft-Lite Lens Company to the wholesaler, and you discussed—what do you mean by discussing prices?

Mr. SEYMOUR. I object to what he means by discussing prices.

Q. What was said.

Mr. SEYMOUR. He ought to say what was said.

Mr. ISSERS. All right, what was said.

The COURT. The objection is sustained.

Q. What was said between you gentlemen?—A. It was said by Mr. Hubbell and by myself, one or both of us, that the price to the retailer should be fixed high enough so as to give a decent margin of profit.

Q. To the wholesaler?—A. That is right.

Q. As a result of any of those discussions were the prices of Soft-Lite increased, from the wholesaler to the retailer?

Mr. SEYMOUR. I object to that "as a result of any of those discussions," your Honor.

Mr. ISSERS. If he knows.

396 Mr. SEYMOUR. And it calls for the operation of the witness's mind.

The COURT. Ask him about after the discussions.

Q. After the discussions was there any increase in prices, if you know?—A. There undoubtedly were.

Mr. SEYMOUR. I object to "undoubtedly."

Q. What is your best recollection?—A. I would say yes. The records would show——

Q. Were there any discussions with regard to prices from Soft-Lite Lens to the wholesaler? I think you testified there were.—A. I did.

Q. What was the nature of those discussions, if you recall?—A. From the Soft-Lite——

Q. To the wholesaler.—A. To the wholesaler?

Q. Yes, sir.—A. Yes. Only that we should be given a margin sufficient to make it—to continue it as a profitable item.

Q. After any of these discussions were there price changes by Soft-Lite Lens Company with regard to the prices from Soft-Lite to the wholesaler?—A. I believe there were.

Q. That is your best recollection; you say you believe?—A. Yes.

Q. Going to the conversations now as to which you have testified, between Messrs. Hubbell, Singer, and yourself and the Bausch & Lomb representatives, you mention either Mr.
397 Hammele or—I believe you said Mr. Eisenhart and Mr. Ramaker. You said there were discussions about price policy from the wholesaler.

Mr. SEYMOUR. Let us have the place.

Mr. ISSEKS. We have been over that. I am going back solely to find out what the nature of the prices was.

Mr. SEYMOUR. The witness referred to certain conversations in Atlantic City.

The COURT. Yes.

Mr. SEYMOUR. And he referred to conversations all over the United States. I want to know the category into which this falls.

Mr. ISSEKS. The witness said in Atlantic City there were no price discussions, as I remember it; it was just a friendly relationship.

The COURT. Try to have the witness localize these conversations if he can within reason. Since this is very ancient stuff I will adopt a liberal policy and let him give generally the conversations.

Q. Referring to the testimony you have given with respect to conversations at Rochester at which you said Mr. Hammele, Mr. Eisenhart, and Mr. Ramaker and possibly others were present with you and Mr. Singer, was there any discussion about prices?—A. Yes.

Q. Prices between Soft-Lite and the wholesalers?—
398 A. That is correct.

Q. What was the nature of those discussions?—A. The discussion of revision of lists from time to time, the discussion of maintaining a decent and a uniform price.

Q. After those conversations were there revisions of lists, to your best recollection?—A. There were revisions from time to time.

By the COURT:

Q. At any time during those conversations was an actual list before you on the table?—A. On several occasions.

Q. At which Bausch & Lomb representatives were present?—A. Yes.

By Mr. ISSEKS:

Q. Do you recall who was present?—A. Only that it would be one of these several men named. I think Mr. Eisenhart was the most active man. We met with him more often than anybody else. After the death of Hammele. Before we sat together.

Q. Cr- you fix the date of the death of Mr. Hammele?—A. I beg pardon?

Q. You do not happen to recall the exact date of the death of Mr. Hammele?—A. No; I do not. I think that Mr. Hammele died in '27. I may be considerably off on that.

399 The COURT. Those lists included prices to wholesalers and prices to retailers?

The WITNESS. Yes; and license plaques.

Mr. SEYMOUR. I move to strike that out, if your Honor please, as not responsive.

Mr. ISSEKS. I will ask the question.

Mr. SEYMOUR. Your Honor's question, and counsel's question, was about prices.

The COURT. Let me explain to you why I said before I would not accept an objection based on nonresponsiveness except from the man putting the question. The man putting the question has the right to a responsive answer, but nobody else has unless the material be irrelevant. Obviously if he gives a nonresponsive answer and he is interested in it and I grant your motion, he will then proceed to ask that question and we will always be going around in a circle. So far as an answer being nonresponsive is concerned I will entertain an objection of that character only from the person who puts the question. I know that the contrary is practised in many courts, but that is what I will do.

Mr. SEYMOUR. I can see the substance behind your Honor's position on that. The difficulty is that that ruling prevents opposing counsel from protecting themselves against a hostile volunteering witness.

400 The COURT. Oh, no; you can move to strike on the ground that it is irrelevant. But if the answer is relevant and goes to one of the issues, what good would it do me to grant your motion to strike out; because in the very next question counsel will put that to him and will get that answer.

Mr. SEYMOUR. I move to strike it out on the ground it is irrelevant and immaterial.

The COURT. Overruled.

Q. You also testified to conversations you had other than the conversation at the Palmer House early in 1930 at which Messrs. Taylor and Eisenhart were present with representatives of Bausch & Lomb, at which Mr. Singer was not present.—A. That is correct.

Q. I asked you whether those conversations related to price policy, and I think you said yes.—A. Yes.

Q. What kind of price policy conversations did you have with the Bausch & Lomb people at which these Soft-Lite people were not present?

Mr. SEYMOUR. I object to the form of the question.

The COURT. Sustained.

Q. Tell us the conversations that you had with these gentlemen.—A. The conversations had to do with the necessity for uniform prices being extended to wholesalers. There were no
401 discussions as to details, whether a pair of lenses should sell for 95 or a dollar and a quarter.

Q. I will go back. At the conversations at which Mr. Singer was present were there discussions as to the details of prices?—A. Correct.

Mr. ISSEKS. I understand your Honor won't let me go into the conversations that the witness had with his own managers with regard to prices to the retailers.

The COURT. So far I have not seen any foundation laid which would make anything of that character admissible.

Mr. ISSEKS. Your Honor will recall that part of the distributor system and the price policy as shown by the price lists issued was that the charge to be made from wholesaler to retailer was as specified in the price list. It seems to me we can show that a wholesaler followed that policy. That is all I am trying to do.

The COURT. That the wholesalers followed that policy?

Mr. ISSEKS. That is it.

The COURT. Of charging the price?

Mr. ISSEKS. That was in the Soft-Lite price list.

The COURT. Do you have to prove that by conversations between the president of the company and his own salesmen?

Mr. ISSEKS. I can ask him the general question.

The COURT. Yes; go ahead and ask him the general
402 question in the conduct of his business did he charge the prices in price list so and so?

Q. You are familiar, are you not, with the price lists that Soft-Lite put out at the time you were the head of Riggs?—A. I was at that time.

Q. Did that indicate the price to be charged from wholesaler to retailer?

Mr. SEYMOUR. I object to that.

The COURT. Sustained.

Mr. Isseks. I would like to have the price list from 1927 to 1930.

The Court. You can show it to the witness. You had some.

Mr. Isseks. I do not think I have it for that period. The ones I put in were for 1940.

The Court. He might testify that the one in 1931 was similar in form. There were price lists for 1925, 1926, 1927, 1928, 1929, and 1930, weren't there?

Mr. Isseks. Yes; I have them right here.

Mr. Lehrich. There is no dispute about that.

The Court. There is no dispute about it. He says you can take the 1940 prices.

Mr. Isseks. No; if counsel's statement is that there is no dispute that the wholesalers charged the retailers the prices
403 set forth in the Soft-Lite price list, from wholesalers to retailers, that is all I need.

The Court. Is that what you are ready to concede?

Mr. Lehrich. There is no dispute that we prepared a price list and distributed it among the wholesalers, and expected them to follow it.

The Court. Are you willing to go further and admit that they did follow it?

Mr. Lehrich. So far as we know they did. We hope they did follow it.

The Court. Are you willing to concede for the purposes of this record that they did?

Mr. Lehrich. We are willing to concede that so far as we know the Riggs Optical Company followed the prices suggested in printed price lists we prepared and furnished to the Riggs Optical Company.

The Court. Do you need any more?

Mr. Isseks. Not from this witness. No further questions.

The Court. Does that concession made by Mr. Lehrich apply to Mr. Seymour?

Mr. Isseks. I take the stipulation from them, and it seems to me if your Honor finds there is a conspiracy I won't have to worry about the rest of it. I assume that is a concession that a witness would so testify.

404 The Court. Maybe we can get a little further. Not only that he would so testify but that it is a fact? So far it is stipulated that it is a fact but not that the witness would so testify.

Mr. Lehrich. I stipulate it is a fact, and I do not care what he testifies.

The Court. All right, we will let it go at that.

Cross-examination by Mr. LEHMAN:

Q. Mr. Wahlgren, when you met Mr. Singer for the first time Mr. Singer was a salesman, or rather was in business selling lenses of the two types that you mentioned, Thin-Lites and Soft-Lites?—A. Correct.

Q. And you at that time were connected with an optical company called the Riggs Optical Company?—A. I was what?

Q. Connected with an optical company.—A. That is right.

Q. Mr. Singer's call on you was in the nature of a regular canvass by a salesman; there were no preliminaries to that conversation made by anybody else, were there?—A. No.

Q. You saw him and were not interested in his product for some time? I say you saw him and told him you were not interested in his product for some time?—A. I did not tell him that I was interested until I had talked to him several times, if that is what you mean.

405 Q. To begin with you told him you were not interested?—A. That is right.

Q. And Mr. Singer was not discouraged?—A. Not a bit.

Q. He came back?—A. Yes.

Q. And he kept pounding until he excited some interest?—A. That is right.

Q. And what bothered you was whether there would be a continuing source of supply of the glass from which the Soft-Lite lenses were made which Mr. Singer was showing you?—A. That is correct. That is one phase of it.

Q. You told him and you wrote him that you had had an unfortunate experience in some other lenses that you had featured in your business, where the source of supply had suddenly been shut off?—A. I told him that, and I may also have written him that.

Q. Mr. Singer sold you lenses, Soft-Lite lenses, in 1923 and in 1924, didn't he?—A. Your records should show that. I don't remember.

Q. Now I gather from your testimony before that you bought no Soft-Lite lenses prior to your taking or arranging with Mr. Singer to meet in Rochester?—A. I did not so testify.

Q. If I am mistaken I do not mind being corrected on that. You did buy lenses and were a Soft-Lite lens customer of Optical Service Corporation prior to the time that you and

406 Mr. Singer went to Rochester, as you testified?—A. Now are you telling me that or asking me?

Q. I am asking you.—A. I think that we bought Thin-Lites, and we may have bought some Soft-Lites.

Q. Prior to the time that the first conversation took place in Rochester in 1924?—A. Oh, yes, I think we did. Certainly Thin-Lites.

Q. Did Mr. Singer tell you early in 1924, March or April, that he was having Kryptoks fused by Bausch & Lomb?—A. He did not to my recollection.

Q. You recall nothing about that at all?—A. I do not.

Q. Did Mr. Singer tell you in some of his calls in 1924 that Mr. Tom Byrne, the New York representative of Bausch & Lomb, had given him a letter of introduction to Mr. Hammell up in Rochester, and that Mr. Singer had gone up there and made arrangements for Bausch & Lomb fusing Kryptoks for him from his French Soft-Lite glass?—A. I don't remember that conversation, no.

Q. Your recollection is when Mr. Singer met in Rochester with Mr. Hammele on one of the first occasions when you were present that was new business to Mr. Singer, he had never been there before and did not know any of those personalities?—A. I would not say that.

Q. Did you get the impression when you met all these people in the room that Mr. Singer knew the people?—A. I
407 have the impression that Mr. Singer had been to Rochester and had tried to get them to manufacture glass but had failed to do so.

Q. In June 1924, when they agreed to manufacture lenses for him; single-vision lenses, that was still from his French Soft-Lite glass; that is right, isn't it?—A. Well, I am taking your word for that.

Q. Well you looked at this memorandum before, didn't you? That refreshed your recollection?—A. That is right.

Q. Exhibit 1 was an arrangement for the manufacturing of lenses from French glass, not Bausch & Lomb glass, you recall that?—A. I recall that exhibit.

Q. Exhibit 1 refreshed your recollection, did it not, that the conversation or the arrangement made about June 11, 1924, was for the grinding of lenses from French glass?—A. I repeat that I did not know at the time I talked to Mr. Singer about having Bausch & Lomb making glass that they were grinding any of his French glass.

Q. I think you told Mr. Isseks after you looked at Exhibit 1, which is dated June 11, 1924, that that exhibit refreshed your recollection, that you went to Bausch & Lomb in Rochester early in

1924 to talk to them with Mr. Singer about their making the glass for him.—A. That is correct.

Q. Now when I show you the Exhibit No. 1 dated June 11,
408 1924, does it refresh your recollection that the first conversation that Mr. Singer had up there at that time or prior to that time was with respect to the manufacture of lenses from his French glass?

Mr. Isaacs. Let him look at it. Do you want to look at it? He said he showed it to you [handing to witness].

A. Well, I don't think I need to look at it. My very definite impression is that when I first met Nat Singer Bausch & Lomb were not grinding lenses from his French glass, and it was because he was using what I call mongrel lenses that I was not particularly interested in taking them on in any large way.

Q. Now looking at Exhibit 1, from which it appears that Bausch & Lomb on June 11, 1924, made the arrangement with Mr. Singer to grind lenses from his French glass at that time, does that now help you to place the conversations that you had subsequent to that or prior to that?—A. I would not say so.

By the Court:

Q. You would not say which, that it was before or after?—A. Well, I don't know.

Q. Did your conversations take place prior to that or after?—A. Well, I would say that they took place prior to this date.

409 Q. You reaffirm your previous testimony?—A. Correct.

By Mr. Lehrich:

Q. In the course of your frequent contacts with Mr. Singer after you went to Rochester, did he subsequently tell you that Rochester made an arrangement with him—and by Rochester I mean Bausch & Lomb—not to make glass for him but to grind lenses for him from the French glass?—A. I do not recollect that; no. It would seem not improbable, if they were going to manufacture glass in the interim they might grind from his French glass.

Q. That exhibit indicates that on June 11th the arrangement was made to grind lenses. You said a little while ago that Mr. Singer, prior to the time you went to Rochester with him never told you about any arrangement for grinding lenses, and the first you knew is that he was going up with you to arrange for the manufacturing of glass; is that right?—A. Now I don't know that I quite got that, Mr. Lehrich.

Q. (Read by reporter.)—A. The time that I met Nat Singer in Rochester, the purpose of our meeting as I remember it was to arrange with Bausch & Lomb to manufacture glass. I am willing

to accept this as evidence that they ground lenses from French glass. I do not know what difference it makes, if it makes any difference.

Q. It does to me. After you took Mr. Singer up to
410 Rochester and they made their arrangement, as you testified, for the manufacture of glass, you saw Mr. Singer very frequently thereafter?—A. Quite frequently, yes.

Q. And you became pretty close friends?—A. We did.

Q. And business associates in several ventures?—A. Correct.

Q. Did Mr. Singer at any time tell you that the first arrangement that Bausch & Lomb made with him was for the fusing of Kryptoks, next for the grinding of lenses from French glass, next the manufacture of glass? Did he ever tell you that in that sequence?—A. I never knew, or if I did I have forgotten it, that Bausch & Lomb ever made any Kryptoks from his French glass prior to the time that I had met him.

Q. Then I assume since you never knew such an arrangement was made you are ready to testify you never sat in on any conversation when that was discussed?—A. When what was discussed?

Q. About Bausch & Lomb grinding lenses for Optical Service out of glass.—A. Oh, no; you are mistaken, sir. At that time we discussed the grinding of lenses and the manufacture of glass.

The COURT: Did you discuss the grinding of lenses out of French glass?

411 The WITNESS. Whether they were going to grind from French glass temporarily or not I do not remember.

Q. Government's Exhibit 1, a memorandum by Bausch & Lomb Optical Company, signed with the initials A. D. B.—which I think is Mr. Buedingen?—A. Correct.

Q. Indicates an arrangement made about grinding lenses from French glass. You were not present at any such conversation, were you?—A. Not if it was an arrangement made prior to the time that I met Nat for the purpose of interesting them in taking up the manufacture of glass and being his source of supply.

Q. If the arrangement took place prior to the time that you took Mr. Singer there, of course you were not there.—A. Of course I did not take Mr. Singer there.

Q. Do you recall being present at any arrangement for the grinding of glass with the details indicated in that memorandum?—A. No; I do not.

Q. Do you know the first time the subject of manufacturing glass was discussed with Mr. Hammele was subsequent to that?—A. No; I think that Nat had told me that he had tried to interest Bausch & Lomb in manufacturing his glass but had not been successful in doing so, nor in having them grind the lenses. I believe I so testified.

Q. Primarily when you went up with Mr. Singer to Rochester you went up to clear the atmosphere as to what kind of
411–A an individual Mr. Singer was and whether or not Bausch & Lomb could trust him in doing business with him in the future?—A. That question came up, but that was not the prime purpose of going there.

412 Q. Your prime purpose was to get Bausch & Lomb to manufacture glass for Mr. Singer?—A. And grind the lenses.

Q. And you thought, from your personal standpoint, that that would be a good arrangement?—A. I did.

Q. And that decision had nothing to do with any discussions with Bausch & Lomb to begin with?—A. I don't quite get that.

Q. Well, you decided after you talked with Nat Singer that if he had a permanent source of supply of glass——A. We would like to take on the lenses.

Q. It would be a good line for you to handle in Riggs Optical Company?—A. That is correct.

Q. And this is a time before Riggs Optical Company was affiliated with Bausch & Lomb?—A. That is right.

Q. And it had nothing to do with Bausch & Lomb in this instance——

The COURT: Except as a customer.

Q. But you were considering it exclusively from your own standpoint?—A. I was thinking of the profit Riggs Optical Company might make through having another line of tinted lenses.

Q. And when you went up with Mr. Singer, you went up to get available for your company, as a customer, a line of lenses
413 that you thought would be profitable for your company?—A. That is correct.

Q. Now Bausch & Lomb or anybody connected with Bausch & Lomb, did not ask you prior to the time that you suggested to Mr. Singer his going up there, that you bring Mr. Singer for such an arrangement?—A. I do not think so.

Q. That idea originated with you.—A. I believe so. In fact I am sure of that.

Q. Now when you got there, the man in charge of that type of business, such as grinding lenses for somebody, in obtaining a service situation, having glass of its own, or making a new lens or lenses, or new line of lenses, the man in charge of that division of the business was Mr. Hammele, is that right?—A. He was general sales manager and his influence was very broad.

Q. Well, in the first instance, the proper approach would not be to go to Mr. Hammele, the sales manager?—A. It would if you knew the situation. Joe Hammele had much more to do than just directing the force of salesmen.

Q. Well, you acquainted him with the situation, didn't you, in the first instance? Or did you go over his head in the first instance?—A. I do not think so. I think I first contacted Mr. Hammele.

Q. And when you contacted with him and talked with
414 him, that was in the presence of Nat Singer, I understood.—A. I am quite sure.

Q. Was Mr. Buedingen present?—A. Very likely he was. He is one man I had forgotten. A. D. Buedingen. He was active in connection with lenses.

Q. Now at the very first conversation, Mr. Buedingen or Mr. Hammele did not send for Mr. William Bausch and Mr. Eisenhart or Mr. Edward Bausch, did they?—A. I think that we got together before we left on that trip. We may have come back. I am not certain as to that, but I am sure we met with several of the executives on the occasion of this first meeting.

Q. You were talking at the first meeting, were you not, about the manufacture of some glass for a small company which was in existence at the time for two years?—A. I did not know how long it had been in existence.

Q. Well, you know now that they had been formed in 1922?—A. Well, I will take your word for it.

Q. Is this the first time you heard that they were formed in 1922?—A. If I had heard it before, I had forgotten.

Q. When you went up there you knew it was a new company?—A. I knew it was a small company, a new company, you are correct, yes.

Q. And that it was really a one-man proposition?—
415 A. I thought so.

Q. And they had not made any reputation; had no standing of any kind?—A. That is correct.

Q. And what Mr. Singer talked to Mr. Hammele about in your presence, as you say, was purchasing a minimum of lenses made from Bausch & Lomb glass in one year, isn't that so?—A. I did not testify to that.

Q. Well, did that question come up as to what Mr. Singer could furnish them by way of business if they gave him an exclusive arrangement?—A. I doubt that it did. I think that they were satisfied to know that there would be distribution in volume if the Riggs Company and others got behind it.

Q. Did not Mr. Hammele say "Who is this fellow; how much can he sell; why should we give him an exclusive arrangement with respect to some glass we will make for him?" Didn't he ask questions of that kind?—A. He may have asked such questions.

Q. And you told him at that time that Mr. Singer and his company had very little or limited distribution, but could get a

larger distribution if Riggs and White-Haines got behind them?—A. That is correct.

Q. And on that statement, substantially, Mr. Hammele called in Mr. Edward Bausch and Mr. Herbert Eisenhart and Mr.
416 William Bausch, the three top executives of the company?—A. I would say that before the day was over, if it was on that trip, and I think it was, we sat in, and when I say we, I mean Nat Singer and myself and Mr. Hammele, and no less than three of the other named men, and discussed this matter.

Q. Well, in a general way they wanted to know what sort of price policy Mr. Singer then had, didn't they?—A. I do not recall that they asked him what he did have. They wanted to know how he was going to handle their product, if made.

Q. You tell me just what he said in answer to that question as best as you can recall.—A. I would say that all of them expressed the opinion—you object to the word "agreed"—expressed the opinion that they would not care to take up the manufacture of his product and let it be a football; that it must be sold along the lines of their own sales policy which was one price to everybody.

Q. That is right. They had a high grade sales policy. Each customer who bought from Bausch & Lomb bought at the same price.—A. So far as I knew.

Q. So that the substance of the conversation was the reference to football?—A. Yes.

Q. As you understood it.—A. That is right.

417 Q. And they wanted, in other words, Singer, if he was selling a Bausch & Lomb made product, to have a policy somewhat similar to theirs; that is, all customers treated the same way, fairly?—A. That is correct.

Q. And Singer said that that was what he intended to do?—A. That is right.

Q. As a matter of fact, that is what he was doing at the time.—A. I do not know that.

Q. Don't you know how he was selling?—A. I did not have the faintest idea. I had never seen the man up to a few months before that.

Q. But by the time Mr. Singer interested you to the extent where you were willing to go to Rochester and use your influence up at Rochester to get Rochester to make glass for him——A. Yes.

Q. Do you mean to say you undertook that without knowing how he was selling his lenses at the time?—A. I had not the faintest ideas as to how he was selling his lenses at the time; whether he had one price or eight, and it is a perfectly natural conclusion, aside from the fact that he had made a personal favorable personal impression, that I did not fear but what Bausch & Lomb could hold him in line.

Q. Yes.—A. No, sir.

Mr. ISSEKS. I was trying to refresh his recollection only, your Honor.

363 The COURT. The question is, does it refresh your recollection; the answer is either yes or no.

The WITNESS. Well, the answer is that it does.

The COURT. Very well. Now you may proceed.

Q. Approximately with relation to those dates when did you have these conversations relative to distribution?—A. Relative to the licensee plan and to the sale of the product only to recognized dealers——

Mr. SEYMOUR. If your Honor please, I move to strike out the answer as not responsive.

Mr. ISSEKS. It is not responsive. I agree.

The COURT. It will be stricken.

Q. I am trying to find a time in respect of that. Was it after that or before that that you had these conversations about the method of distribution?—A. The conversations with respect to the method of distribution were held after the Bausch & Lomb Company had agreed to make the glass.

Q. It was subsequent to June or July 1924?—A. I would say so, yes.

Q. And where were these conversations held?—A. In Rochester.

Q. And who was present, if you can recall? The same people?

Mr. SEYMOUR. And the time, please. Not just "subsequent."

364 Q. How soon thereafter?—A. I answered the question I would think, I would say, very soon thereafter or about that time.

Q. You cannot fix the exact date?—A. No, sir, I cannot.

Q. Or the week or month?—A. No, sir.

Q. Who was present?—A. Several of the Bausch & Lomb men whom I named in my earlier statement.

Mr. SEYMOUR. Let us know which ones.

Q. That is all right. If you can, all right, and if you cannot, you just can't.—A. Well, I can remember of Hammele being present. I can remember of Herbert Eisenhart being present.

Q. Anybody else?—A. Yes; but I cannot recall the name of the particular one.

Q. Who was present besides those gentlemen from Bausch & Lomb? You, Mr. Singer and anybody else?—A. Mr. Hubbell was usually present, Dan Hubbell of the White-Haines Company.

Q. Tell us what was said with regard to the method of distribution and if you can tell us who said it, please do so.—A. Nat

Singer outlined his plan of distribution which, as I remember it, was to license certain customers, and we—by "we" I mean Dan Hubbell, myself, the both of us, and one or more of the
365 Barsch & Lomb representatives, agreed that that was the sound thing to do.

Mr. SEYMOUR. I do not think the witness ought to testify with reference to legal conclusions. If he stated the conversation, all right, and I move to strike out the answer about the agreement.

The COURT. Motion granted.

Q. Tell us what was said if you remember who said it; you never studied law, did you?—A. No.

Q. Thank you. All right.

The COURT. It is not difficult, Mr. Witness, if you will only observe the limitations under which we work.

The WITNESS. Yes.

The COURT. It is objectionable to have you testify there was an agreement or that there was not, or to use any other word which implies certain legal conclusions. That is for the law books and the lawyers and the judges. What they want you to testify to is what lay language was uttered, and what the significance of that language is is no concern of yours.

The WITNESS. No.

The COURT. So your previous answer having been stricken out, please try and answer counsel by giving him the substance of the language used. You don't have to try to remember the
366 exact words, but the substance of it, without translating it or without giving it your own construction.

Mr. ISSEKS. Your Honor, may I have the last question and answer read so the witness can pick up the continuity?

The COURT. Certainly.

(Question and answer read.)

Mr. ISSEKS. Your Honor has only stricken the second part of the answer, I assume?

Mr. SEYMOUR. I think there was some doubt as to whether he was testifying to a conversation when he said, as I remember, something about the licensing system. I doubt if that is the witness's memory of the conversation.

By the COURT:

Q. When you say these gentlemen agreed, you mean you expressed assent at this meeting?—A. That is right.

Q. You did not enter into any agreements—A. I did not mean to imply that at all.

By Mr. ISSEKS:

Q. What did Mr. Singer say first? Your answer is out at the present moment.—A. It would be utterly impossible for me to say at this time what he first said at that meeting.

367 Q. I mean in substance what did he say with regard to the distribution system?—A. He outlined his proposed plan for a license system.

Q. And did anybody else present anything among you gentlemen, you and Mr. Hubbell and the Bausch & Lomb people—you said you recall Mr. Eisenhart and Mr. Hammele and somebody else might have been there—what did they say, one or more of them?—A. Again it would be impossible for me to say just what was said and who said it.

Q. Substantially is all we ask.—A. That is right.

Q. Tell us the substance.—A. The substance was that—I want to omit the word "agreed" because there was no agreement in that sense—that it was thought wise, it was thought that this plan was a sound and practical one that might well be used and might well work.

By the COURT:

Q. What was the plan that was outlined, what words, if you can remember, were used, and the substance if you cannot remember the words; how did Mr. Singer outline his so-called licensing plan of distribution?—A. I cannot remember the words.

Q. Then give us the substance of the plan that he suggested?—A. The substance was that he would select certain dealers who would be given the right to sell Soft-Lite lenses, and that he would not sell Soft-Lite lenses to others than those whom he

368 thought met the requirement, and by requirement I mean——

Q. What did he mean?—A. He meant people who did an ethical business and were not known to be price cutters.

Q. When you say he meant it, you mean be expressed that idea in words that you no longer remember?—A. Exactly.

Mr. LEHRICH. I did not get the expression of the witness because of the interruption.

(Question and answer read as follows: "Q. What did he mean?—A. He meant people who did an ethical business and were not known to be price cutters.")

By Mr. ISSEKS:

Q. Was there anything else said about the method of distribution other than through dealers? Was anything said about the method of distribution to retailers?—A. I do not now recall that there was. That was later discussed.

Q. I am talking about this meeting at Rochester, and we will come to other later meetings later.—A. I do not think so.

Q. And when you say "we" indicated certain things, meaning who besides you and Mr. Hubbell, if anybody?—A. Well, at the later time that I refer to——

Mr. Isseks. I see counsel is going to object and I will save him time.

369 Q. How much later, if you recall?—A. Maybe six months and maybe a year.

Q. Where?—A. At various places in——

Q. You have to be specific if you can.—A. In Chicago, in Columbus, Ohio, in Rochester, New York, or in New York City.

Q. Can you differentiate? Were you at all four of those places; can you distinguish between them?—A. No.

Q. I am not going to ask a question about the conversation until I——A. I cannot.

Q. You cannot distinguish?—A. No.

Q. Can you recall who was present; take all four places over approximately a year.—A. I can remember that we three, as we called ourselves, that is to say, Dan, Nat and I, met over a period of months or years very frequently and discussed the policies of the company.

Mr. Isseks. I want to help the Court out, and I apologize if I am——

The Court. I need all the help I can get.

Mr. Isseks. If I am doing anything your Honor might think sounds repetitious, I just want to explain that I want to bring some other facts in which are just on the fringe.

370 Q. Between the time you were having these conversations in 1924, several months prior to June, and these later conservations, you became the president of Riggs Optical Company?

Mr. Seymour. Wait. If your Honor please; this is not a hostile witness, nor ought he to suggest in his question the answers that the witness did not give.

The Court. This witness I have not ruled to be a hostile witness.

Mr. Isseks. He is not.

The Court. On the other hand, we are dealing with events of seventeen years ago, and providing counsel for the Government does not seem to be taking advantage of the freedom I am giving him, I will permit him a certain latitude within very restrained limits.

Mr. Seymour. There is an especially good reason, which your Honor will see later, why this witness should not be led. Counsel ought to be held strictly to the rule and not ask leading questions.

Mr. Isseks. I did not intend to ask leading questions.

The COURT. You had better protect your record by not doing it.

Q. Well; you were president of the Riggs Optical Company at the time you were having these conversations among the three of you?—A. Not at the time I had the earlier conversations. I became president of Riggs in 1925, I believe.

371

Q. And at the time you became president, Riggs was an affiliate of Bausch & Lomb?—A. That is correct.

Q. And approximately how much business was Riggs doing within a year in volume?

Mr. SEYMOUR. I object to that as immaterial to any issue in this case.

Mr. ISSEKS. Your Honor, I am trying to show, if I may, why these three gentlemen were meeting. I am coming to another question in a minute which will bring it out. I am trying hard to avoid asking leading questions.

The COURT. You may ask whether Riggs was a customer of Bausch & Lomb first.

Mr. ISSEKS. I will put it that way.

Q. Was Riggs a customer of Bausch & Lomb during this period?—A. Yes.

Q. Throughout this period?—A. Yes.

The COURT. I will now let you ask the volume of business that was done. I think that is relevant to whether these conversations would be likely to have some influence. If Riggs was an important customer to Bausch & Lomb, obviously that conversation would be of much greater moment than if they were not, so I will allow the question.

372

Q. Approximately. It cannot be held to exact figures.—A. No.

Q. Will you tell us approximately how much business it did?—A. In 1924?

Q. Yes.—A. How much it did buy from Bausch & Lomb?

Q. No, the total.—A. Do you want the Riggs total sales?

The COURT. No, I want to know how much business it did with Bausch & Lomb.

Mr. ISSEKS. Oh, excuse me.

The WITNESS. We were not a large customer at that time.

The COURT. Was it thousands or tens of thousands or hundreds?

The WITNESS. Oh, yes; I would say a couple hundred thousand.

The COURT. A year?

The WITNESS. That is right.

By Mr. ISSEKS:

Q. After you became affiliated how much——

Mr. SEYMOUR. I object to that as immaterial.

The COURT. We have not had any definition of the term "affiliate."

372-A Mr. ISSEKS. The record shows they became an affiliate in 1925. I will ask what date.

The WITNESS. The contract for the purchase of the Riggs stock was signed, as I recall, on February 25, 1925.

373 Q. And after you became an affiliate did the business increase between your company and Bausch & Lomb?

Mr. SEYMOUR. I object to that as immaterial.

The COURT. Objection sustained.

Mr. ISSEKS. Your Honor, may I be heard on that?

The COURT. If you want to ask the question now how much business Riggs did generally in 1924, very well. But I would like to know the relevance of that question before I permit it.

Mr. ISSEKS. I will tell your Honor. This largest independent optical wholesaler was going to Bausch & Lomb with this new distributor of Soft-Lite lenses in an effort to bring about an arrangement, a contractual arrangement, and as part of it it is our claim that there was a distributor system. The witness, if given the opportunity, will tell why this large manufacturer of Bausch & Lomb, a large independent, was interested in that kind of system.

The COURT. You want to indicate that the Riggs Optical Company was a very large factor in the optical business?

Mr. ISSEKS. That is it.

The COURT. I will allow that question.

Q. What was the total volume of Riggs in 1924?—A. Mr. Isseks, when you say that do you mean the volume of sales?

374 Q. Yes; of sales.—A. Volume of sales?

Q. Gross. Not purchases.—A. Well, I cannot remember that figure. I can remember that the last year I was there——

Mr. SEYMOUR. I object to testimony about the last year he was there.

A. (Continuing.) It was approximately——

The COURT. There is an objection, and I sustain it. The question is addressed to the year 1924.

Q. If you know.

The COURT. I will let you give an approximate answer.

A. I would say—I may be off a half a million dollars—I would say that in 1924 the Riggs sales were certainly in excess of $2,000,000.

Q. Do you want to say anything else?

The COURT. I will say that I will permit a correction of this answer if the witness discovers that he is way out of line; and I assume counsel won't object to an appropriate stipulation for the correction of the answer.

Mr. ISSEKS. I would like to continue to interrogate the witness about the conversations that took place between him, Mr. Hubbell and Mr. Singer.

The COURT. Go ahead, and fix the time.

Q. Did a time come after these meetings in Rochester when you had any conversations with Mr. Singer
375 with regard to stock of Optical Service Corporation?—A. Yes.

Q. Approximately when—A. I would say some time after Riggs had become affiliated with Bausch & Lomb—I would say conversations took place before that time.

Q. It became affiliated in 1925?—A. Yes; and conversations took place before that time. I did not actually become a stockholder until, if I remember correctly, and I think I do, until after Mr. Riggs had sold his stock to Bausch & Lomb.

Q. You never became a stockholder of record, did you?

Mr. SEYMOUR. I object to it as not the best evidence.

A. Never.

Mr. SEYMOUR. I object to it.

Mr. ISSEKS. We will call for the stock books now, I would like to have them.

The COURT. Let me ask whether there is any dispute about any of these facts. If not we are wasting an awful lot of time.

Mr. LEHRICH. Your Honor, there is certainly serious dispute as to what transpired, in this version as Mr. Isseks develops it.

The COURT. Is there any dispute as to when Mr. Wahlgren became a stockholder, and when Bausch & Lomb acquired the
376 stock of Riggs Optical Company? Is there any dispute they did acquire the stock and what percentage of the stock? Are any of those issues in dispute?

Mr. LEHRICH. Your Honor, there is this dispute, as to whether Mr. Wahlgren and Mr. Hubbell were stockholders. I am willing to stipulate that Mr. Wahlgren and Mr. Hubbell acquired an interest in the holdings of Mr. Nat Singer in the Optical Service Corporation.

Mr. ISSEKS. When?

Mr. LEHRICH. Starting in 1925.

Mr. ISSEKS. I want the exact date. I do not want it myself, but I want it because counsel for Bausch & Lomb want it.

The COURT. Very well. Can you get the exact date?

Mr. LEHRICH. Yes; I will get it.

The COURT. And it will be incorporated in the record. So we will dispense with this line of inquiry.

Mr. LEHRICH. I want to get away from the subject of the nature of the holdings of Singer and Wahlgren, as to whether they were stockholders or not, because there were escrow agreements and quite a——

The COURT. But you agree that there was an interest?

Mr. LEHRICH. That is right.

The COURT. Do you need any more on that for your case? Do you want the precise nature of that holding?

377 Mr. ISSEKS. I would like to ask the witness what his understanding of the holding was.

The COURT. Oh, no.

Mr. ISSEKS. Then I would like to have the records, your Honor, because that point becomes important in the case.

The COURT. Very well.

Mr. SEYMOUR. I object to the whole line. When this line was first opened the day before yesterday I objected, and I have a continuing objection, to any questions about personal stock interest of these gentlemen. There is no claim that it was beneficially held for Riggs or anybody else, but was a personal stock ownership or interest. I object to it as by no possibility binding on Bausch & Lomb or its affiliates, and having nothing to do with this case.

The COURT. I will sustain your objection as to what this gentleman's understanding was.

Mr. ISSEKS. I did not ask the question, because your Honor told me that I could not, and I won't.

The COURT. And I reserve ruling as to this line.

Mr. LEHRICH. I think at this time the witness might be asked whether his acquiring of the interest in Soft-Lite had any connection with Bausch & Lomb, or whether it was merely a personal investment of his.

378 The COURT. If Mr. Isseks does not ask it I will let you ask it on cross-examination.

Mr. ISSEKS. I will ask it now.

Mr. LEHRICH. I think if your Honor put the question it would act as a guide with respect to all these questions.

The COURT. No; I won't put the question. We are in a controversial area and I am not going to take the case away from counsel. I will let Mr. Isseks try the case in his own way, and will let you try your case in your own way. But I ask you not to get into things that are not serious. There is enough here to fight about.

Mr. ISSEKS. I will say it for the last time, I hope; we asked for stipulations in your Honor's presence.

The COURT. That is ancient history now. You wanted to know the precise character of the interest that Mr. Wahlgren had?

Mr. ISSEKS. That is right. And Mr. Hubbell, too.

The COURT. If you want it as to Mr. Hubbell, go ahead and prove it in your own way.

Mr. ISSEKS. I do not intend to call Mr. Hubbell. He is at present with White-Haines, an affiliate. The corporate record will show it.

Q. You testified about a conversation or conversations in
379 four cities and could not place which ones, at a period six months or a year after your conversations in Rochester a few months after June 1924. That takes us to 1925.—A. That is right.

Q. And there were four places—Columbus, Chicago, New York, or Rochester.—A. That is right.

Mr. SEYMOUR. That is a pretty leading form of question.

The COURT. No.

Mr. ISSEKS. Then let us have his answer read.

The COURT. I remember it very distinctly. He said he had conversations in all or most of these places.

Q. You cannot differentiate them, can you?—A. No, because we met more than once in each one of these places.

Q. At that time you had already had your conversations about the stock interest with Mr. Singer?—A. That question is rather vague, it seems to me.

The COURT. You cannot answer it?

The WITNESS. At the time of one of these meetings, one or more of them, we had had such conversations; yes.

Q. Now tell us what conversations you three had with regard to this licensing system as far as retailers were concerned? That is how we got to it. Tell us the conversations, and if you recall you specify where they were and the approximate dates, and I would appreciate it.—A. I cannot specify the date within a
380 year's time, and I still cannot tell you at which one of these points we discussed licensing systems. My recollection is that we discussed them at all of these points.

Q. What was said?—A. I beg pardon?

Q. What was said about retail licensing systems?

Mr. SEYMOUR. I do not want to overburden your Honor with objections. From the very vague statements of the witness as to time and place it seems reasonably probable that the conversation he is talking about took place prior to any affiliation. It is therefore objectionable on many grounds as against Bausch & Lomb.

The COURT. Prior to February 1925?

Mr. ISSEKS. I will ask the question.

The COURT. Put that question to the witness.

Q. Were any of these conversations after February 1925?—A. Yes.

Q. One or more?—A. Yes; several.

The COURT. Were there any conversations relating to licensing schemes after February 1925?

The WITNESS. Yes.

Q. Tell us what was said.

Mr. SEYMOUR. I object to what was said, whether it was before or after 1925, on the ground that the mere fact that this gentleman had some connection with one of the affiliates would
381 not make it binding. Perhaps your Honor will receive this subject to the general objection, and I present that ground as well.

The COURT. Very well.

Mr. ISSEKS. You do not want to hear me, I assume?

The COURT. No.

A. Is there a question?

Q. The question is, what was said about a licensing system, and if I may I would like to direct your attention to retail licensing systems.—A. We discussed modifications——

Q. What was said?—A. Oh, it would be impossible for me to say precisely what was said, Mr. Isseks.

Q. The substance, please.—A. In substance we discussed changes in terms, in quantities that the licensee must buy in order to become a licensee, and what his discount should be.

Q. Yes?—A. That is substantially all. What the rates should be, what the prices should be.

Q. From the wholesaler to the——? A. From the Soft-Lite Company—or I think it was then the Soft-Lite Company. I think such discussions occurred when it might still have been the Optical Service Company.

Q. When you say there were conversations after February 1925, do you bring them right down to 1930?—A. I would say that such conversations occurred—and I will say this
382 very definitely—from time to time right up to the time that I surrendered any stock interest in the Optical or in the Soft-Lite Lens Company.

Mr. SEYMOUR. If your Honor please, I move to strike the answer, because the use of the word "such" therein makes the whole answer ambiguous. That makes the whole thing ambiguous. Does he mean such as conferences among these three gentlemen or conferences on those subjects? It is not clear, and it seems to me that is ambiguous.

The COURT. I will overrule your objection, but will ask counsel to clarify it by a succeeding question.

Q. Did you hear the objection?—A. Yes.

Q. What did you mean?—A. I meant these various meetings.

By the COURT:

Q. At which licensing schemes were discussed?—A. Licensing schemes and other matters.

Q. Price relationships?—A. That is right.

Q. Did you discuss what price should be charged by the Soft-Lite Company to the wholesaler?—A. Undoubtedly.

Q. And what price should be charged by the wholesaler to the retailer?—A. We did.

Q. And by the retailer to the consumer?—A. We never got into that. That is, I never did.

383 Q. And those conversations extended from the time you mentioned in 1925 right down to the time you resigned from the Riggs Company, or that you abandoned your stock in the Soft-Lite Company? As to that I was not clear.—A. In the first place, though it does not make any difference, I did not resign from the Riggs Optical Company; I was kicked out of it. The conversations extended up to the time that I had surrendered my holdings or my interest in the Soft-Lite Lens Company.

Q. Now can you fix the time of that?—A. I think my stock, or the stock certificate that I held in the Soft-Lite Lens Company was turned back to Mr. Singer some time in the summer of 1930.

Q. And the conversations therefore extended until about that time?—A. That is right. Quite regularly up to that time.

(Short recess.)

By Mr. ISSERS.

Q. Mr. Wahlgren, at any of these conversations between you Mr. Hubbell and Mr. Singer were there any persons from Bausch & Lomb present, as distinguished from anybody from a Bausch & Lomb affiliate?—A. On several occasions we met with Mr. Joe Hammele in Atlantic City.

Q. Can you fix the time?—A. Between 1926 and 1930.

Q. What was the nature of the conversations there?—

384 A. Those meetings were for the most part social. We discussed optical problems in general. Mr. Hammele was on his vacation on each occasion, and we went down there to meet him, to spend a little time with him.

Q. Was anything said along the lines of the prices to be charged, by anybody?—A. I cannot recall definitely.

Q. Have you any indefinite recollection?—A. No; except that I would say we would discuss the policies of both the jobbers and the Soft-Lite Lens Company; yes.

Q. In respect to prices?—A. Well, my answer to that would be vague. I would say undoubtedly we did discuss prices and terms.

Q. Prices from the wholesaler to the retailer?—A. I would say yes.

Q. Prices from Soft-Lite Lens Company or its predecessor to the wholesaler?—A. I would say yes.

Mr. LEHRICH. Your Honor, this being the controversial part of the case it seems to me Mr. Isseks is going pretty far.

The COURT. Do you object?

Mr. LEHRICH. I object to counsel leading the witness, particularly in view of the witness's statement that all of this is very vague and he has some real trouble recalling any of these conversations. He said they were primarily social.

385 The COURT. Then we will have to get very technical now. You make your objection at the time the question is put and I will rule on them as they come.

Q. In addition to any conversations in Atlantic City with Mr. Hammele did you and Mr. Singer and Mr. Hubbell have any conferences with any other representatives of Bausch & Lomb?—A. At various times, in Rochester.

Q. Can you fix the date, please?—A. Well, I would say that such conferences occurred once or more than once during each one of those years.

Q. And who was present besides you three gentlemen, if you can recall, sir?—A. Well, until the death of Mr. Hammele he was there. After that we sat in with Mr. Eisenhart. I believe on one or more occasions we sat in with Ben Ramaker, and probably Mr. Edward Bausch sat in.

Q. That is your best recollection? You say probably—A. Well, I frequently met with him; yes, and others.

Q. I am not interested in conversations that you had with anybody of Bausch & Lomb alone, or with Mr. Hubbell. I am not interested in those. I want only conversations at which Mr. Singer was present.—A. Mr. Singer was present at a number of these conversations in Rochester with these other men. There were conversations and meetings when he was not present, a good many of them.

386 Q. I do not want any of those unless they relate to Soft-Lite, and I will come to that in a minute. I am talking now only about conversations in which Mr. Singer was present, with the same people. Is your answer the same—Mr. Eisenhart and Mr. Ramaker?—A. Yes.

Q. Can you fix the date of any particular conversation?—A. Not any one; no.

Q. Tell us what transpired at these conversations with Mr. Singer and these gentlemen.

Mr. SEYMOUR. Was the time some time between 1926 and 1930, did he say?

The COURT. He was more precise than that. He said it happened each year between 1926 and 1930.

Mr. SEYMOUR. Let us have the conversations by year if they were different.

Mr. ISSEKS. I am trying hard, your Honor.

The COURT. If he can say, and if not he can give it generally.

Q. Can you give it by years?—A. It would be hopelessly impossible for me to give definite conversations by months or years, Mr. Isseks.

Q. The Court has ruled that if you cannot do that, give us the general conversations to the best of your recollection.—A. At several of these meetings we discussed Soft-Lite policy, we discussed the matter of bringing out additional shapes, different packaging, and prices, and terms; yes.

387 Q. You say prices and terms. Was there any discussion as to prices to whom?—A. I would say yes.

Q. Tell us. Prices from the Soft-Lite to the wholesaler?—A. That is right.

Q. And Soft-Lite to the retailer?—A. That is correct.

The COURT. Not from Soft-Lite to the retailer.

Mr. ISSEKS. I am sorry.

The WITNESS. I mean the wholesaler to the retailer, of course.

Mr. ISSEKS. Wholesaler to retailer; yes.

Q. Any conversations of prices from the retailer to the public?—A. Not as I recall; no. I had such conversations with our own managers.

Q. You mean with Riggs managers?—A. Oh, undoubtedly.

Mr. SEYMOUR. I move to strike that out, sir.

The COURT. Motion granted.

Mr. ISSEKS. Your Honor, he volunteered it. The answer is improper because he volunteered the statement? Because I think it is relevant and I want to be heard on that.

The COURT. I do not think it is relevant what the president of the company said to his own salesmen about prices charged consumers.

Mr. ISSEK. Maybe I can bring it out, your Honor.

The COURT. If you bring it out in a way that it is part of the conspiracy charged, all right, but I am not going

388 to let that in by this sleight of hand.

Mr. ISSEKS. Your Honor, this witness was a stockholder of the Optical Service Corporation, and a member of a certain committee, I think they called it the executive committee. He was one of the original participants in the original conversation with Bausch & Lomb—with Mr. Singer and Mr. Hubbell—where the whole thing started, where the whole discussion regarding the

whole system went on. I would like to ask a few questions and then come to the question that goes right to it.

The COURT. I will rule on each question.

Q. Mr. WAHLGREN, did you ever have any conversations with any executives or salesmen, and if you can tell us who please do, of the Optical Service Corporation or its successor Soft-Lite Lens Company, with regard to prices to be charged by the retailer to the purchasing public for Soft-Lite lenses?—A. I do not think so.

Mr. SEYMOUR. I have a continuing objection to all of this, of course.

Mr. ISSEKS. His answer is he does not remember.

Q. Did you ever have any conversation with the Bausch & Lomb people, executives, between February 2, 1925, and the time you left, with regard to the price being charged by retailers to the purchasing public, for Soft-Lite lenses?—A. I do not think so.

389 Q. Did you ever have any conversations at which Mr. Singer was not present with the Bausch & Lomb optical people with regard to price policy on Soft-Lite lenses of Bausch & Lomb and Riggs Optical Company?—A. Yes.

Mr. SEYMOUR. I object. Just a minute.

The COURT. On what ground?

Mr. SEYMOUR. I object on the ground that these conversations with the Bausch & Lomb people with respect to Bausch & Lomb business, this being an affiliate of Bausch & Lomb, would be wholly immaterial to any charge of conspiracy.

The COURT. Overruled.

Mr. SEYMOUR. Exception.

The COURT. Obviously if he had a conversation with Bausch & Lomb in which Bausch & Lomb expressed an admission relating to this complaint, that would be clearly admissible. The question was did he have any conversations.

Mr. ISSEKS. Your Honor, before I go further—the answer was yes.

Q. Did you answer the question yes?

The COURT. The answer was yes, but you have not brought out what the nature of the conversation was.

Mr. ISSEKS. Before I go to that and in anticipation of the question I will ask the witness in the next few minutes, I direct
390 your attention to Paragraph 21, which is specifically denied by Bausch & Lomb and I think by Soft-Lite Lens Company. There, your Honor, we charge specifically that the local prevailing prices were fixed by the affiliates.

The COURT. That is Paragraph 21?

Mr. ISSEKS. Yes, sir.

The COURT. Of course you will have to go further and show not only that the prices were fixed by the affiliates but that it was part

Mr. SEYMOUR. I move to strike out that answer as irrelevant and immaterial.

The COURT. He asked for it.

418 Mr. SEYMOUR. I did not ask for it.

Mr. ISSEKS. I submit the answer should stand.

Mr. SEYMOUR. But it is not a statement with respect to a conversation. The question calls for a conversation. His observation is irrelevant and immaterial and incompetent.

The COURT. I will reserve decision on this application of Bausch & Lomb, but I will let the answer stand.

Mr. SEYMOUR. Exception.

Q. And what you meant by holding Mr. Singer in line was, I suppose, if Mr. Singer, as a customer of Bausch & Lomb, sold his merchandise on a policy not satisfactory to Bausch & Lomb, that they would exercise their judgment in refusing to deal with him thereafter, is that what you meant?—A. That was one of several clubs they could use.

Q. Such as refusing to give you the merchandise if you did not have a price policy and a sales policy, and channels of distribution satisfactory to them for products made by them?—A. That is right, or raising the price so high he could not sell it. I do not know whether to call it that. You know it as well as I do.

Q. In other words, you meant since the glass was specified at no specific price, you felt any time Bausch & Lomb

419 wanted to discontinue making lenses for Mr. Singer they could do it by raising the price to him high enough to make it unprofitable?—A. I think they can do it today, if you want me to give my opinion.

Q. I think so, too. Now I think you said a minute ago you had no idea what his sales policy was before he started in with Bausch & Lomb?—A. That is correct.

Q. And at that first conversation he said he would use a license policy——A. I doubt whether he said that before we went down to Rochester to make arrangements for the manufacture of glass.

Mr. ISSEKS. The witness said Riggs. I am sure he did not mean Riggs.

The COURT. He said Rochester.

Mr. ISSEKS. I am sorry.

Q. You doubt that he used the word "license"?—A. I do not recall his having discussed that. That was not the prime matter in mind.

Q. What was the discussion about. The method of distribution? At that conversation?—A. At the time we discussed ar-

ranging or trying to arrange with Bausch & Lomb to make the glass? I doubt that there was any discussion at all.

Mr. Isseks. I hate to get up, but I would like to have
420 counsel say what conversation. The witness I think thinks he is talking about the meeting with Singer alone.

The Court. No, he is talking about the first meeting in Rochester at which were present——

The Witness. I beg your pardon, your Honor. I thought he was talking about the meeting with us in Omaha.

Mr. Isseks. That is what I thought.

The Court. Then we were confused.

Q. When Mr. Singer talked with you in Omaha you say you had no knowledge about his method of distribution?—A. Positively not.

Q. When he tried to get your business for Riggs didn't he tell you what he wanted; how he would sell you or how he sold others?—A. I doubt he did. He probably assured me if he could make arrangements with Rochester he would give us a decent price. He must have——

Q. When you got to the point where you were interested in taking Mr. Singer to Rochester, he came to you and solicited you as a customer for his goods?—A. That is right.

Q. Didn't he tell you then what he was selling and how he was selling it and what his prices were and what his set up was?—A. Undoubtedly.

Q. Did he at that time tell you that he sold only job-
421 bers?—A. Undoubtedly he did because I was not interested in doing business with people who were selling retailers.

Q. Did he tell you then too that he personally canvassed retailers and solicited them to buy stock quantities of lenses and that when he got such an order he cleared it through a wholesaler that the retailer selected?—A. He may have told me that. I doubt that he did the first meeting.

Q. I mean when he was soliciting your business, did he tell you what his method of operation was?—A. I would say he probably did. My memory is not quite clear on that.

Q. Now when he started with Bausch & Lomb, after your meetings, the meetings that he talked about, the early ones in Rochester all through 1924, when they started to deliver glass to him, did he continue to sell only to wholesalers?

The Court. If you know.

A. I think he had some dispensers on his list—other manufacturers sold certain dispensers whom we considered retailers.

Q. Did he sell after he started with Bausch & Lomb in the same manner and by the same methods as he had before? As he used before he went there, do you recall that?—A. Well,
422 of course I do not know what his methods were before because I was not in any way connected with his company and had never seen his books.

Q. Well, you met him in 1923?—A. Yes.

Q. And you took him to Bausch & Lomb in 1924 and saw him very frequently?—A. We met with Bausch & Lomb.

Q. And you saw him very frequently after that and he was a young man, new in the business?—A. That is right.

Q. Talking to you as the president of the largest wholesale house in the country, seeking your advice and guidance?—A. And got it.

Q. Finally. And eventually made you a member of the committee——A. Correct.

Mr. Isseks. Operating executive committee.

Q. Operating executive committee of his business.—A. That is right.

Q. And in all of this period from 1923 to 1924 you never got the details from him as to the method of operation of his business?—A. Well, I have not testified to that at all.

Mr. Isseks. Now, your Honor——

The Court. The witness is taking care of himself.

A. (Continuing.) I am testifying as to our very early meetings when I knew nothing about him. When we became
423 better acquainted we discussed price policies, license systems, and I guided him as well as I knew how.

Q. Prior to 1924, when you went to Bausch & Lomb, did you discuss price policies?—A. Prior to the time that I met Singer in Bausch & Lomb?

Q. Yes. Now that is from 1923 to 1924.—A. I had undoubtedly advised him that he must have a uniform price policy.

Q. Now before you——A. Except so far as Riggs were concerned.

Q. And he was guided by your advice?—A. So far as I know.

Q. So that when you went to Bausch & Lomb in 1924 that was subsequent to the time that you told him he ought to have a uniform price policy, sell all wholesalers at one price—that is what you mean by uniform policy?—A. I think so.

Q. And that was in effect prior to the time you went up to Bausch & Lomb?—A. I still say I do not know as to that, because——

Q. Do you think he disregarded your advice?—A. I do not think so, no; but I am under oath and I cannot swear to it.

Q. So your best recollection was you told him——

The COURT. I will entertain a motion to strike out the
424 answer as to what he thinks, as to whether he disregarded his advice. It is pretty thin, but no motion having been made, we will let it stand.

Mr. ISSEKS. I have no objection, your Honor.

The COURT. We get pretty thin stuff that way and I have to read it some day.

Mr. ISSEKS. The only trouble is, you read it anyway. The stenographer puts it in there.

Q. When you got to Bausch & Lomb in 1924 and Singer told them about his method of distribution, he told, in substance, that he was selling wholesalers only, isn't that so?—A. He did, no doubt.

Q. And did he also tell them that he was selling or soliciting stock retailers?—A. I doubt that that came up. There would be no reason for it.

Q. That was nothing new in the optical business, was it; selling retailers on prescription and selling retailers on stock or in stock?—A. You mean to have a manufacturer's representative call on a retailer and attempt to sell him?

Q. No; having a jobber sell at stock prices, and at prescription prices to various types of retailers?—A. Every jobber did that I think.

Q. That was an accepted practice?—A. Oh, yes, certainly.

425 Q. Mr. Singer, however, solicited himself retailers to put in a stock quantity, is that correct? Do you recoll that?—A. He no doubt did in the early days.

Q. And when he got a retailer to put in a stock quantity he then called that retailer a stock licensee, isn't that so?—A. I think so.

Q. As far as you know, you never saw any kind of license?—A. During those early times; no.

Q. Will it refresh your recollection if I tell you that the first one we have in court, or have any record of, is 1927; the use of any document between the Optical Service Corporation and a stock retailer?—A. The arrangements were verbal.

Mr. SEYMOUR. I move to strike it out as incompetent, irrelevant and immaterial. It does not describe a conversation. It is just an observation of the witness.

Mr. ISSEKS. He was answering a question.

The COURT. That is the trouble. It was responsive to a question. I will overrule the objection.

Mr. LEHRICH. I will elaborate on that.

Q. Before 1927, when Mr. Singer sold a retailer a stock quantity, he told the retailer thereafter and told the wholesalers that that retailer would get stock quantity discounts, whereas the prescription retailer would not, isn't that right?—A. I assume so.

426 Q. That was common practice in the optical business?—A. Yes.

Q. The only feature that Mr. Singer introduced in 1927 was the use of this document?

Mr. LEHRICH. May I have that?

MR. ISSEKS. Surely. Exhibit 12 [handing exhibit to witness].

A. If he introduced it—you say that was the first time he actually had a written agreement?

Q. Yes, 1927; written paper.

The COURT. Is there anything showing that this is the first?

Mr. ISSEKS. Yes. It is Government's Exhibit 12 which is the document referred to.

The COURT. Is there anything showing that is the earliest use of the document?

Mr. LEHRICH. Yes. The stipulation was on the record that the first record we have of any use of any writing was in 1927.

Mr. ISSEKS. Your Honor will recall counsel made that statement and I said I would take it, and I still take it.

The COURT. All right.

(Question and answer read.)

427 The COURT. Then your answer is "Yes" to the original question, that this was the only innovation introduced by Mr. Singer.

Mr. LEHRICH. The use of the paper.

The WITNESS. I should say so.

Q. And in mentioning license system or license in 1924 in the conversations with the Bausch & Lomb representatives, was it the use of this paper or was it the sale to stock retailers of stock quantities that was discussed?—A. I would say that I did not hear the paper discussed, nor did I see any form of license at that time.

Q. Well, by "license system" the words you used before as having been mentioned in that conversation—was that elaborated upon by anybody?—A. It no doubt was discussed, and if anybody did not understand exactly what he meant he no doubt asked about it.

Q. Now do you recall anybody saying "I don't know what you mean by a 'license system.' Tell me what you are going to do"?—A. I would naturally assume, not recalling the exact words——

Q. If you do not recall——A. (Continuing.) The exact words—that Nat Singer proceeded to outline what his policy was going to be, license or otherwise.

Q. And the policy he outlined was this policy we are
428 talking about now of selling to wholesalers and to retailers, soliciting retailers for stock quantities?—A. I am not sure that he discussed the matter of soliciting retailers for stock quantities.

Q. What did he say as you recall it?—A. He gave assurance, and I have already testified several times I think, that he would not use Soft-Lite lenses as a football; that prices would be uniform, and that he would operate, so far as his price policy was concerned, as Bausch & Lomb did. I cannot recall, and I doubt very much, that there was any detailed reference made to such a license as you have shown me.

Q. You used the word before, and your recollection is now, no use of the word "license" or "license system" was made?—A. Oh, yes. I recollect that the words "license system" were used both as to wholesalers and retailers. You asked me something quite different.

The COURT. If this is a good point to stop, we will adjourn until two-fifteen.

(Recess until 2:15 p. m.)

429 AFTERNOON SESSION

ROY M. WAHLGREN, resumed the stand.

Cross-examination continued by Mr. LEHRICH:

Q. Mr. Wahlgren, when you met up at Bausch & Lomb with the Bausch & Lomb people, it was frequently for the purpose of discussing the problems of Riggs Optical Company as a wholesaler, isn't that correct?—A. That is correct.

Q. And you were interested from the Riggs standpoint, as an executive of Riggs Optical Company, in finding out what the cost would be for your company from Bausch & Lomb for merchandise sold by them to your company?—A. We often discussed that.

Q. And you frequently went up there for the smoothing out of some of the problems of Riggs Optical Company doing business with Bausch & Lomb's factory?—A. That is correct.

Q. On some of those trips you ran into Mr. Singer without appointment?—A. That is correct.

Q. Mr. Singer was up on some of his problems with Soft-Lite Lens Company?—A. Very likely.

Q. Such as cost to him from the factory?—A. Yes.

The COURT. Of course this witness would not know anything about it.

Q. Did you sit in at some of the discussions Mr. Singer had with some of the representatives of Bausch & Lomb as to the costs to Soft-Lite of lenses made by Bausch & Lomb?—A. No; I do not think I did as to the costs.

Q. To Soft-Lite.—A. As the prices at which they would be sold to whom?

Q. To Soft-Lite.—A. I do not think so.

Q. But you did sit in at conferences in which there was discussion by Singer with some representatives of Bausch & Lomb as to what prices Soft-Lite lenses would be sold to wholesalers?—A. That is right.

Q. Now you were interested as a wholesaler in knowing what Soft-Lite lenses would cost you?—A. That is right.

Q. And you made various suggestions as to what those prices should be, is that correct?—A. I was interested in knowing that there would be a margin giving us a profit, yes.

Q. And you always made suggestions where you saw that margin was profitable for the Riggs Optical Company as a wholesaler?—A. Undoubtedly.

Q. But Mr. Singer made the decision, did he not, as to what those prices would be?—A. I believe he did.

Q. Now you and Mr. Singer were interested in a number of private ventures, were you not?—A. We were interested in several, yes.

Q. Well, such as a furniture company—Lorays, Limited?—A. I doubt that I was ever a stockholder in Lorays, Limited.

Q. Well, did you have an interest?—A. I would say no. I am not positive about that. If I did, I never held a stock certificate.

Q. How about Hazelite Corporation?—A. That is right.

Q. You were interested with Mr. Singer in that company?—A. I was.

Q. And that was not related in any way to any optical business? It was a plywood company, wasn't it?—A. Actually, the Hazelite Corporation never did anything; never sold anything so far as I know; never made a sale.

Q. Well, it held patents on plywood, on the manufacture of plywood?—A. I am not sure about that.

Q. It was not an optical operating company?—A. I am very positive not.

Q. And you were interested with Mr. Singer in the Copeland Refractoscope Company, is that correct?—A. If the Copeland Refractoscope was not sold by Soft-Lite—if there was such a corporation.

Q. Well, there was such a corporation?—A. If there was I in some way participated.

Q. And that was a company selling scientific instruments?—A. That is right.

Q. The Rood Ear Corporation?—A. Never heard of it.

Q. A hearing device company.—A. Never heard of it.

432 Q. Oregon Products?—A. Never heard of it.

Q. Glarometer Company?—A. Never heard of it.

Q. Had its office in Chicago.—A. Never visited its office; never knew it had one.

Q. Did you have an interest with Singer in the company?—A. I am very certain I did not; not to my knowledge.

Q. Well, in the companies I have mentioned in which you had an interest, you and Mr. Singer would meet to talk those over, wouldn't you?—A. We did.

Q. You, Mr. Singer, and Mr. Hubbell socialized quite a bit, didn't you?—A. When we were together in connection with business matters, we had luncheon together and dinner together and occasionally went to a show together.

Q. And occasionally you took vacations together down at Atlantic City and other places?—A. That is correct.

Q. And in the course of those meetings you talked general optical business, didn't you?—A. Undoubtedly.

Q. And you took up specific questions about Soft-Lite Lens Company and about Riggs Company and White-Haines?—A. Correct.

Q. You exchanged information up and back over the periods that you had contact with Mr. Singer?—A. That is right.

Q. Now, Mr. Wahlgren, you were out of the optical

433 business from 1931 to what time?—A. I was forced out through an injunction issued in 1931, and it was impossible for me to get a job in the optical business because people were fearful of hiring me for several reasons until 1939. I started with my present company in August 1939.

Q. During that period between 1931 and 1939 you came to Mr. Singer frequently for financial assistance?—A. I came several times.

Q. And you got it several times?—A. Several times I did.

Q. However, in 1938 you came to him for a job with his company, didn't you?—A. I did not—to the best of my knowledge; if I did, I have forgotten it.

Q. Well, see if this does not refresh your recollection. Was this letter written by you [handing]?—A. Well, this very definitely refreshes my memory. It is my letter.

Q. It is in your handwriting?—A. No question about it.

Mr. LEHRICH. I offer it in evidence.

Mr. ISSEKS. May I see it, please.

Mr. LEHRICH. There is a typewritten copy which is easier to read [handing to Mr. Isseks].

Mr. ISSEKS. I have no objection.

(Marked "Defendants' Exhibit A.")

Q. After you wrote to Mr. Singer and told him, as you
434 did in Exhibit A, that you were having trouble getting three meals a day, and that you wanted a job from him, he told you he would not have you in his employ, didn't he? Yes or no.—A. Well, he must have because I did not go on his payroll.

Q. Well, he never employed you after you wrote that letter?—A. He did not dare to.

Q. What is that?—A. He did not dare to.

Q. He did not care to?—A. He did not dare to.

Q. Well, he told you he would not employ you?—A. If you have a letter on that—did he write and tell me?

Q. Well, did he tell you orally that he would not employ you? Yes or no. That is all I want.—A. I would say he must have.

Q. Did Mr. Singer tell you he had given you as much financial assistance as he thought he was called upon to give, and that he was sorry for your condition, but that under no circumstances would he have you work for him? Did he tell you that in words or substance? Yes or no.—A. He told me that he could not and would not extend me further financial assistance.

Q. After he told you that he did, however, give you further financial assistance?—A. Yes, he has.

Q. He gave you some very recently, two or three months
435 ago.—A. Around the first of May I think.

Q. That is right, and that is an unliquidated debt right now.—A. The first note in repayment was due on September 1st and that was for $15 and it was paid a few days before September 1st.

Q. And the balance is still unpaid?—A. Yes. It is not delinquent, however.

Q. I did not say delinquent. I said unliquidated.—A. It is not liquidated.

Q. There is still a balance due?—A. That is correct.

Q. And Mr. Singer at the present time is paying the tuition of your son through school?—A. He is.

Q. And has been for three or four years——

The COURT. What is the relevance of this?

Mr. ISSEKS. I have no objection.

The COURT. There must be some limit to this proceeding.

Mr. LEHRICH. The relevance is to show this man's animosity against this gentleman because he would not take him into his company.

Mr. ISSEKS. Preposterous.

The COURT. It may be preposterous but he is showing he is helping him right now.

Mr. ISSEKS. I could not have brought it out, your Honor,
436 because I thought it improper direct, but I am glad to have it brought out. The witness has told me the whole story.

Mr. LEHRICH. I think we should not have any testimony by Mr. Isseks at this time.

The COURT. Yes. Go ahead.

Q. Ever since Mr. Singer told you he would not employ you, you have been rather resentful, haven't you?—A. Not at all.

Q. And you came here purely in the interest of the truth and telling what you did?—A. That is all; absolutely.

Mr. LEHRICH. That is all.

Cross-examination by Mr. SEYMOUR:

Q. Mr. Wahlgren, you said something this morning about the fact that you had to be careful what you said because you were under oath, didn't you?—A. Well, I am rather careful what I say when I am not under oath.

Q. You respect the sanctity of the oath?—A. I do.

Q. You always have?—A. I always have, and of my personal word when I am not under oath.

Q. Were you a defendant in a lawsuit in the United States District Court for the Northern District of Illinois; brought by Bausch & Lomb Optical Company and Riggs Optical Company?—A. That injunction suit?

Q. Yes.—A. I was.

437 Q. In that suit was there a proceeding to punish you for contempt?—A. There was, for violating an injunction.

Q. Was there a Master's report in connection with that proceeding?—A. Indeed there was.

Q. Did the Master say in the course of his report "I find as a matter of law that the answers filed by the defendants as noted in the findings of fact (p. 7, ante No. 2,) were deliberately false and untrue and were filed for the purpose of delaying and defeating justice, and also I find as a matter of law that the acts of Roy M. Wahlgren, Benjamin S. J. O'Dell, Oscar G. Wahlgren and Earl G. Wahlgren, Dwight W. Bradley and Howard Boll and Leland Davis, constitute a conspiracy to flout the administration of justice."

Mr. ISSEKS. I object. The document speaks for itself, and there was an appeal and reversal, and, as your Honor realizes, this is a court proceeding and the Court can take judicial notice of it.

Mr. Seymour. This is a Master's report.

The Court. Do you object to this question as improper?

Mr. Isaacs. That is right.

The Court. On what ground?

438 Mr. Isaacs. On the ground that the document will speak for itself.

The Court. I would overrule that objection because that would not be a proper objection. The question is whether he was a defendant in a suit in which the following was stated. It is not objectionable on the ground you specified.

Mr. Isaacs. I object on the ground it is improper cross-examination.

The Court. Isn't it material on his credibility?

Mr. Isaacs. The report itself? I have no objection to putting the report in. Let him put it in as a judicial record.

The Court. I will overrule the objection.—A. Well, the Master put in everything and anything in that.

The Court. The question was, were you a defendant in a suit in which that was said?

Mr. Isaacs. He has already answered he was a defendant.

Mr. Seymour. My question is, did the Master so find?

The Court. The answer to that is yes or no.

The Witness. I do not recall the exact wording.

Q. Do you dispute he made that finding?—A. I do not dispute anything that that Master found.

Q. Did he make that finding, Mr. Wahlgren?—A. I say

439 that so far as I know that follows the language, and I add to that that he was very reckless in what he put in, and I do dispute what he put in the record or in his findings.

Q. Did he make that finding, Mr. Wahlgren?—A. If you are reading from the record, I will take your word that he did.

Q. I want to know whether he did or not?—A. I cannot say whether those were his exact words or not.

Q. You do not dispute it?

The Court. We have enough of that. He said if you say it is in the record he will take your word for it. That is an affirmative answer.

Q. Mr. Wahlgren, the report of the Special Master in that proceeding to which I have just referred, with the exception of the amount of the fine to be imposed, was affirmed in the District Court, was it not?—A. It was.

Q. Was it affirmed on appeal? It was, was it not?—A. I believe it was.

Q. Was certiorari denied by the Supreme Court?—A. It was.

Mr. Isaacs. Your Honor, I must object. It seems to me, your

Honor, that the witness cannot be expected to know what happened ten years ago. I have no objection to the record.

440 The COURT. You have a right to put them in. You have no right to instruct your adversary that he should put in a record which he does not choose to put in. If he says "I don't remember," then that might be another proposition, but apparently he knows the answers and it is material to his credibility.

Q. Referring to the same litigation, Mr. Wahlgren, on the proceeding for an injunction as opposed to the proceeding for contempt which I have just referred to, was there also a Master's report in favor of the plaintiffs?—A. There was. Everything was in favor of the plaintiffs.

Q. And was that report affirmed by the District Court?—A. So far as I know, it was.

Q. You know it was, don't you? Were not you a party to the proceedings?—A. Well, it was undoubtedly affirmed.

Q. And was the decision of the District Court affirmed on appeal? It was, wasn't it?—A. I believe we appealed it, and if it was, it was affirmed.

Q. Was certiorari denied by the Supreme Court?—A. Did both matters go to the Supreme Court?

Q. Don't you know, Mr. Wahlgren?—A. No.

Q. Isn't it a fact that an application for certiorari to the Supreme Court was denied?—A. Yes.

441 The COURT. I have allowed the last set of questions because there is no objection, but I should say in my judgment that is not relevant on credibility. The mere fact that an injunction proceeding was had and a Master's report was filed does not tell me anything as to a man's credibility. It does tell me that there was litigation between this witness and one of the defendants in this suit which has a bearing on bias.

Q. Mr. Wahlgren, is there a judgment outstanding against you in favor of the plaintiffs in the injunction suit arising out of your contempt?—A. Is there a judgment?

Q. Yes.—A. There is a fine for contempt of court payable to the plaintiffs if I remember correctly.

Q. And is that still outstanding?—A. It is.

Q. And do you remember the amount of that judgment?—A. Somewhere between $40,000 and $50,000.

Q. Now, referring to the Master's report——

The COURT. Which one?

Mr. SEYMOUR. In the injunction proceeding.

Q. (Continuing.) I ask you, Mr. Wahlgren, whether the Master found as follows: "Finding 17. After November 7, 1930, the defendants Roy M. Wahlgren, Dalton W. Bradley, Earl G.

Wahlgren, J. Earl Lewis, F. Howard Boll, Leland Davis, Walter Carlsen, M. A. Dittebirner, Wahlgren Optical Company of
442 Waterloo, Iowa, and Oscar G. Wahlgren, their agents and servants, conspiring and confederating together to disturb, destroy and ruin the Riggs Company, deliberately committed the following overt acts".

Did the Master make that finding?

Mr. Isseks. Your Honor, I must object. It seems to me, I have no objection to them putting the record in, to go to the question of credibility, and your Honor can look at them and see what is in them, but to ask this witness over and over again, did the Master find that, is merely going to take up time.

The Court. I am trying to rule on this in this sense: it is always proper to ask the witness, were you convicted of a crime, and you do not have to submit the sentence of the Court or offer the sentence and judgment of the Court before asking that question, and in a way he is asking him whether he has ever been adjudicated an injunction breaker, or something of that character.

Mr. Isseks. The witness has testified to that. Now he is going along another line, did the Special Master find so and so and so and so. I have no dispute the witness will not dispute the record and does not dispute the record, I am sure. Let us put the record in.

The Court. You are making a suggestion as to expedi-
443 ency of the trial. I do not know which would cause less delay.

Q. Did the Master make that finding?—A. We disproved all of those charges.

Q. I did not ask you that. Did the Master make that finding?—A. If you read correctly, he did. He made some such finding.

Q. You do not dispute he made that finding?—A. I do not. In a general way he found that way.

Q. Did the Master also find in the findings following that I have just read to you, that the defendants whose names I have mentioned, "Circulated false and untrue statements, derogatory to the Riggs Company and Bausch & Lomb, both to the Chicago and other employees and of the customers and prospective customers of the Riggs Company in and around Chicago and elsewhere, all for the purpose of damaging and disrupting the business and personnel of the Riggs Company and furthering the business of Wahlgren Optical Company, Boll Opticians, Inc., Wahlgren Optical Company of Waterloo, Iowa, Wahlgren-Carlsen Optical Company, Optical Service Company, and the other optical companies planned by the said Roy M. Wahlgren to be

opened elsewhere in cities where the Riggs Company is doing business."

Mr. Isseks. I make my objection again, but I won't make
444 any more on the assumption that your Honor does not want me to——

The Court. No, I want you to make any objection you feel disposed to. Go on. I will let this one in; whether I will let any more in I will rule on afterwards.

Mr. Isseks. Then I will have to get up every time.

The Court. That is right.

A. He must have. The Master found anything and everything, whether it was true or not.

Q. Did he make the finding I have just read to you?—A. So far as I know, he did.

Q. You do not dispute he did?—A. I do not.

The Court. Are there many more of these?

Mr. Seymour. There are three more.

The Court. Wouldn't it be more expeditious if you offer the Master's findings in evidence.

Mr. Isseks. I do not dispute them, Your Honor.

The Court. I am speaking purely about expedition. The reason I have permitted several is because I think on cross examination you are entitled to make an effort of disturbing the equanimity of your witness, and I have let you do that, but I do not think more of that is going to accomplish any more. It is merely a matter of expedition.

445 Mr. Seymour. I would like, if I may, to read this. It would take only a couple of minutes.

The Court. Read all of the several findings then together and ask a single question.

Q. I ask you whether, Mr. Wahlgren, in the course of the Master's report to which I have referred in the previous question; the Master also found that the defendants, including yourself "Took lists of names known as trade or customers' lists, which lists were provided confidentially, and the exclusive property of the Riggs Company, while certain of the defendants or their agents and co-conspirators were still in the employ of the Riggs Company, and said information so obtained has been used in the prosecution of the businesses in which defendants, or some of them, were interested as herein found," and further, "Caused the three thousand or more grinding tools of the Chicago City office of the Riggs Company to be mixed and confused so as to seriously impair the efficiency of any crew that were working with those tools and an Orthogon chart necessary for calculating the proper curves in certain lines was taken from said office or destroyed, and prescription orders were, on and between De-

cember 31, 1930, and January 3, 1931, wilfully written erroneously
by the defendants and their agents or co-conspirators, so
446 that the lenses would have different foci and visual powers
from the orders given by customers"; and further,

"The conspiracy between the defendants and their conduct has been wickedly and maliciously entered into and carried on for the purpose of injuring the character, reputation, standing and business of the plaintiffs; and even if they honestly believed, upon advice of counsel or otherwise, that their contracts of employment above enumerated were not enforcible in law or in equity, the conduct of Roy M. Wahlgren, Dalton W. Bradley and Earl G. Wahlgren, as shown by the evidence and found herein, was deliberately and absolutely reprehensible and dishonorable and cannot be too strongly condemned."

I ask you, did the Master so find?—A. I would answer that in the same way.

Q. You do not dispute he did?—A. I do not, and I will add to that if reputable witnesses were called they would disprove every one of those ridiculous charges.

Q. And the District Court and the Circuit Court affirmed the Master's report?—A. In some strange way that was done.

Mr. SEYMOUR. That is all.

The COURT. Is there any redirect?

Mr. ISSEKS. One or two questions.

447 Redirect examination by Mr. ISSEKS:

Q. When is the first time you talked to either me or any of any associates?—A. The first time?

Q. Yes, to your best recollection.—A. I believe it was a week ago yesterday. You see this is Thursday—it was a week ago Wednesday.

Q. How did you come to get in touch with anyone connected with my office?—A. I did not get in touch with you. I received a letter at Danville, Illinois, about two or three weeks ago, from Mr. Glickfeld, saying that he obtained my address through the Chicago office, and asked if I could come down in connection with the forthcoming suits against certain optical companies.

Q. And before you came to see me, whom did you see in New York City?—A. In New York City, the first was my old friend, Nathaniel Singer.

Q. And did he ask you what you were doing around New York City, or did you tell him about it that way?—A. I think that I remarked in the course of our conversation, after Mr. Landis, who first received me—I will have to correct myself—Mr. Landis received me at the office.,

Q. And then you saw Mr. Singer?—A. I saw Mr. Singer after that. I just testified I saw Mr. Singer first.

Q. And you told Mr. Singer you came to see one of my
448 associates or were coming the next day?—A. Yes.

Q. And did he ask you to talk to somebody on the telephone?—A. Yes.

Q. Who is that?—A. His attorney, who is here in the room, one of his attorneys.

Q. And the next day you came to see us?—A. I did.

Q. Then you talked to Mr. Glickfeld and then you talked to me?—A. That is right.

Q. And with whom did you have lunch that day or the next day?—A. The day I talked to you I had luncheon alone. The next day I had luncheon with Nat.

Q. And did you tell him at that time what had transpired when you saw us?—A. I told him you had asked me certain questions and I answered them to the best of my ability.

Q. Did you meet anyone on your way out to or at luncheon?—A. Accidentally, or I was told it was accidental, as I believed at the time, when I was coming out of the restaurant where we had luncheon—I forget the name for the moment—we ran into this same attorney—what is the name?

Mr. Isaacs. Mr. Lehrich?

The Court. The one who cross-examined you?

The Witness. Incidentally, did you ask me if I saw this attorney the first day?

449 Q. No.—A. I talked to him on the telephone.

Q. Reference was made to an injunction decree. Did that injunction enjoin you from being in the wholesale optical business for a number of years?—A. It enjoined me for a period of five years from the date that I left.

Q. During that period of five years were you in the optical wholesale business?—A. I had something to do—oh, following? No. I had something to do with the organization, I think, I had a very prominent part in the organization of certain optical companies before the injunction was issued and I was charged, and that is how they got this fine for violation of the injunction, with continuing in an advisory capacity with certain optical companies, yes.

Q. After the injunction issued did you continue—or I will put it this way—after the contempt proceeding did you continue?—A. After the contempt proceeding, after I had been found guilty of contempt?

Q. Yes.—A. I am very sure I did not. I would have to see the date to say definitely. In any event I tried to get into another line and did.

Q. And you started to go back in the optical business sometime in 1939?—A. In August, 1939.

Mr. Isseks. No further questions.

Mr. Seymour. No questions.

450 Mr. Isseks. The Government calls Mr. Robbert. My associate will examine.

Lloyd H. Robbert, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Glickfeld:

Q. Mr. Robbert, with what company are you associated?—A. Atlas Optical, sir.

Q. Where is that located?—A. New Orleans.

Q. What is your position with that company?—A. Manager.

Q. Is that a corporation?—A. Yes, sir; incorporated under the laws of the State of Louisiana.

Q. Do you own any stock in that corporation?—A. No.

Q. Do you know who the substantial stockholder is in that corporation?—A. Fred Robbert and H. J. Robbert.

Q. What is your relation to the two Robberts you have just mentioned?—A. Son and uncle.

The Court. You are the son of one and uncle of the other?

The Witness. Son of F. W. Robbert.

Q. And what is your relation to the other?—A. Nephew to H. J. Robbert. Pardon me.

Q. What are your duties with the company, sir?—A. Well, I attend to the buying and selling of merchandise, the han-

451 dling of general sales policy of the company, and have been for the past ten or twelve years.

Q. And is the company a Soft-Lite licensee?—A. Yes, sir.

Q. And how long have they been a licensee?—A. Ever since the licensee arrangement was incorporated by the Soft-Lite Lens Company; probably it would be fifteen or twenty years.

Mr. Lehrich. Do you mean a Soft-Lite distributor licensee?

The Court. The question was whether he was a Soft-Lite licensee.

Q. And what kind of licensee are you?—A. We are a distributor licensee.

Q. Wholesaler?—A. Wholesaler or distributor, whatever you call it.

(Paper marked "Government's Exhibit 106" for identification.)

Q. Mr. Robbert, I show you Government's Exhibit 106 marked for identification and ask you if you can identify that piece of paper?—A. I have the copy of it here.

Q. Can you identify the piece of paper I have just handed You?—Yes, sir.

Q. And will you tell us what that piece of paper is?—A. That piece of paper is a memorandum item or piece of paper given by the Soft-Lite Lens Company representative.

452 The COURT. To you?

The WITNESS. To myself or my father. It could have been either one. It has been at least two to five or seven years ago. It is hard for me to remember who it was given to; quite possibly it was given to me.

Q. And can you explain the circumstances under which that piece of paper was given to you?

Mr. LEHRICH. I object until the witness identifies the representative. All the record shows is a representative.

The COURT. I will sustain your objection for the time being. Let us see whether we can develop it.

Q. Do you know the name of the representative who gave you that piece of paper?—A. In that period of time there have been about four or five Soft-Lite representatives that called at our office.

Q. And what are their names, sir?—A. Well, Mr. Ray Landis was one; Mr. True was one of them; later on Mr. Smith was another one, and Mr. Harry Vernon. Mr. Harry Vernon called on us most of the time and prior to him giving this list he called on us, so I guess, oh, I guess six or seven years before he gave this list. I am pretty reasonably sure it was Mr. Harry Vernon. I may be mistaken about that, though.

453 The COURT. But it was surely given to you by one of the representatives of the Soft-Lite Lens Company?

The WITNESS. Yes, sir.

The COURT. And you think it was Mr. Vernon.

The WITNESS. Yes, sir.

Q. Who was present when that piece of paper was given over?—A. There were two of us there, my father and mlself—Fred Robbert and myself.

Q. Was there anyone else present?—A. There may have been a young lady there present at the time. I am not so sure.

Q. What is her name?—A. Miss Hopkin.

Q. Where did this take place?—A. In the office.

The COURT. Office your company?

The WITNESS. Office of our company.

Q. And do you recall the conversation which took place at the time this piece of paper was given over?

Mr. SEYMOUR. As this is a new witness, I want to record my objection continuing to this line of testimony on behalf of my clients.

The COURT. Yes.

A. I cannot recall what the conversation was. It so happened that Mr. Vernon and the Soft-Lite representatives called on us and they came in and out of the office all day long, making their reports as to what trade conditions were, and just what
454 the sales were throughout the City of New Orleans, and it so happened that the trade in New Orleans was somewhat upset about the Soft-Lite conditions. It is quite possible that may have prompted the Soft-Lite salesman to show this or give this list to me or my father.

Q. Can you explain what those conditions were that you just mentioned?—A. As far as I can remember, there have been two or three jobbers down in New Orleans, I mean Soft-Lite distributors, two distributors rather, other than ourselves in the City of New Orleans, and on my different missionary work or visits to this retail trade, the retail trade, they called my attention to the differentials in prices the retailers were getting in the City of New Orleans for Soft-Lite lenses.

Q. Getting from whom?—A. That they were getting from the consumer.

455 Q. Have you finished your answer?—A. Yes.

Q. And what is the piece of paper that you have identified?

Mr. LEHRICH. I object to that. I think the piece of paper speaks for itself.

The COURT. Sustained.

Mr. GLICKFELD. I should now like to offer in evidence, your Honor, Government's Exhibit marked "106" for identification.

Mr. SEYMOUR. And we would like to see it.

Mr. GLICKFELD. I should like the record to show that the exhibit that the Government is offering is the original piece of paper that the witness has testified was given to him, and that there is handwriting on both sides of the piece of paper. We can have photostats made tonight if they wish.

The COURT. Any objection?

Mr. SEYMOUR. There is my general objection.

The COURT. I mean other than your general objection.

Mr. LEHRICH. No objection.

The COURT. It will be received.

(Government's Exhibit 106 for identification marked in evidence.)

Q. Mr. Robbert, I now hand you Government's Exhibit
456 106, and direct your attention to the numbers and handwriting on the front part of that exhibit [handing to witness] and ask you if you know what those numbers and handwriting represent?—A. Do you mean these figures, sir?

Q. Yes, sir.—A. Well, from the best of my knowledge I think this paper or this item presented by Soft-Lite's representative was to clear in our minds any question that was propounded to us by the retail trade, as to what would be a fair price that the Soft-Lite Lens Company, or rather the Soft-Lite licensees, should receive for their lenses.

By the COURT:

Q. Do you mean from the retailers?—A. Yes, sir.

Q. From the customers?—A. From the customers; yes, sir.

Q. The ultimate consumers?—A. Yes, sir. As a suggestion.

By Mr. GLICKFELD:

Q. I now direct your attention, Mr. Robbert, to the handwriting on the face of the exhibit and the handwriting on the back of the exhibit which follows the numbers, and ask you if you can tell us what that handwriting represents?—A. I don't quite get you, sir.

The COURT. He wants to know what those words mean.

The WITNESS. Well, it so happens also that the Soft-Lite Lens Company—the Soft-Lite lens being a licensee proposition,
457 it is quite possible that this represented or called our attention to the fact that we should—as to who we should and who we should not sell. I am assuming this; I am not positive about that. I would assume that these companies mentioned here in the bottom, or in this list, represented companies that were not licensees and therefore could not be sold.

Q. And did the representative say anything to you at the time that he gave you this piece of paper ——A. I cannot recall.

Q. Concerning the information which was contained on the piece of paper?—A. No, sir; I cannot recall that. That, as I say, would be from 2 to 5 years ago. It is very hard for me to remember that.

Q. Do you have any general recollection of the substance of what he said to you?—A. No, sir; I have not.

Q. You have no recollection whatsoever?—A. No. Truthfully, no; I could not remember.

Q. And subsequent to your receiving this piece of paper did you use the information contained thereon in any manner?—A. We did not have to.

Q. You never transmitted the information concerning prices to any of your retailers?—A. No, sir.

Q. You had previously mentioned some local condition——A. Yes, sir.

Q. Concerning various prices charged by the retailers.—
458 A. That is correct, sir.

Q. Was that local condition still in existence at the time you received this price list, if you know?—A. It may have been.

The COURT. You mean Exhibit 106.

Q. I beg your pardon, I mean Exhibit 106 instead of the price list.

By the COURT:

Q. Did that condition continue after the time you received this piece of paper?—A. Yes, sir; I feel reasonably sure it did.

Q. You testified, did you not, that this piece of paper was given you in an effort to correct that condition? Is that right?—A. Yes, sir.

By Mr. GLICKFELD:

Q. And having so testified, you now testify that you did not do anything further to correct that condition after receiving this exhibit?—A. No, sir; I did not.

Mr. LEHRICH. I object to that. The witness did not so testify.

The WITNESS. I mean I could not say I did, because I didn't. You mean insofar as these prices are concerned?

Q. Yes, sir.—A. Or these rules.

The COURT. I will overrule the objection. I think the
459 witness did so testify, but let us have it clear, because the question is not whether he did or did not but what he is willing to say now. Put the question.

Q. Having received this exhibit, did you inform any of your retail customers to sell Soft-Lite lenses at the prices contained on the face of this Government's Exhibit?—A. No, sir; I did not.

Q. You have a definite recollection of not having done so?—A. Not having done so, yes. I might say further that these restrictions on here, as to who to sell to or not to sell, are customers that we never did business with, so therefore we never had any occasion to reject any item.

By the COURT:

Q. What does that first line mean? I cannot understand it.—A. Soft-Lite Meniscus, Judge?

Q. No.—A. Balcor?

Q. What does that mean, a minimum of $9?—A. Minimum of $9.

Q. Is that the suggested price to the retailer, $9?—A. That is right; yes, sir.

Q. What did you do with this information?—A. Nothing at all, sir.

Q. Just filed it?—A. Just filed it away.

Q. Did the condition that you spoke of become cor-
460 rected?—A. I cannot tell, sir. I have been away a lot and I do not know just how conditions have been, except we have not had any more complaints as to just what the prices were.

Q. Did Mr. Vernon when giving you this piece of paper say that he was leaving duplicates with retailers?—A. No, sir.

By Mr. GLICKFELD:

Q. So far as you know did the condition concerning various retail prices in New Orleans continue after you received this piece of paper?—A. That is pretty hard for me to answer, sir. I do not know.

Q. If you know.—A. I do not know.

Mr. GLICKFELD. That is all, your Honor.

Cross-examination by Mr. LEHRICH:

Q. Your company has been a wholesale distributor of Soft-Lite lenses you say about 15 years?—A. Yes, sir.

Q. You have no license agreement or written agreement of any kind with Soft-Lite Lens Company, have you?—A. No.

Q. You consider yourself a licensed wholesaler because they do business with you; is that what you meant when you said licensed wholesaler?—A. Yes, sir.

Q. You have no written document between your company and Soft-Lite Lens Company? If you know.—A. I can't recall just now.

461 Q. Mr. Robbert, your company does not sell to the consumer?—A. No, sir.

Q. You sell to the retailers?—A. Yes, sir.

Q. At any time during the 15 years that you have done business with Soft-Lite Lens Company, during which these various representatives called on you, did any representative tell you to tell any retailer or all your retailers what price to charge to the consumer?—A. No, sir.

Q. As a matter of fact do you know what prices your retailers get from various consumers?—A. I could not answer that intelligently. Because really I don't know.

Q. Do the prices vary in retail establishments, depending on the retail establishment? In other words, in some part of your city do you have higher-priced neighborhoods and other lower-priced neighborhoods?—A. Quite so, sir.

Q. So far as you know there is no fixed price charged by any retail——A. I do not know that.

Q. (Continuing.) Company, on Soft-Lite lenses—A. I never heard of that.

Q. Never heard of that?—A. I never heard of any fixed price.

Q. When this paper, Government's Exhibit 106, was left with you, did I understand you to say you asked the Soft-Lite representative to find out what conditions were and what prices

462 various retailers were charging?—A. No, sir; I did not ask that at all.

Mr. LEHRICH. That is all.

By the COURT:

Q. Do you sell anybody who is not a holder of a license from the Soft-Lite Company?—A. No, sir.

Q. Why don't you? Is it because that is your understanding, that you are not supposed to?—A. Yes, sir.

Q. How do you get that understanding?—A. With the Soft-Lite Lens Company.

Q. I mean did they tell it to you in writing, by some paper?—A. I don't remember, your Honor.

Q. But that has been the policy followed?—A. That is the policy we have been following.

Q. Right along?—A. And I understand other distributors follow the same policy.

Q. Do you sell all your retail customers at the same price?—A. Yes, sir.

Q. Is it the price suggested to you by the Soft-Lite Lens Company?—A. We sell—yes, sir; suggested by the Soft-Lite Lens Company.

Q. Is it your understanding that you are obliged to charge them that price?—A. Yes, sir.

Q. How did you come to that understanding?—A. For the simple reason, sir, that we get a list of Bausch & Lomb as well as the other, and we follow the list as given to us.

463 Q. You do the same with the Soft-Lite?—A. Yes, sir. With ophthalmoscopes or ophthalmic equipment this is all handed to us.

Q. Has anybody ever told you if you did not do that you would lose your business?—A. No, sir.

Q. Did anybody tell you that you were under an agreement to charge those prices?—A. No, sir.

Q. You feel that is the policy you want to pursue?—A. I feel we did not make enough profit on the merchandise, I will say that.

Q. You would like to charge a higher price?—A. In some instances.

Q. But you do not charge a higher price than suggested to you by Soft-Lite?—A. No, sir.

Q. Nor lower?—A. No, sir.

By Mr. LEHRICH:

Q. With all factories that you do business, in addition to Bausch & Lomb and Soft-Lite, all the factories furnish you with price lists, don't they?—A. Yes, sir; that is correct.

Q. And those indicate the prices that you pay for your merchandise from the factories?—A. That is right, sir.

Q. And they indicate the prices you should get from your retailer?—A. That is right, sir.

Q. And it is the policy of your company to follow
464 whatever price lists the factories give you?—A. Yes, sir. It has always been that way.

Q. It is no different with Soft-Lite than with respect to your other sources of supply?—A. No; there is no difference.

Q. His Honor asked you whether you ever got a notification or some instructions from the Soft-Lite Lense Company about not selling to nonlicensees. I think your answer was you did not remember.—A. I don't remember of any particular notice.

Q. Well you have been getting bulletins right along during all the period that you have been doing business with Soft-Lite; you get those at pretty regular intervals?—A. Yes, sir.

Q. You get all their advertising material?—A. Yes, sir.

The COURT. I suppose those pages 17 to 21 of the exhibit, being the price list for 1940.

Mr. ISSERS. And Exhibit 37.

Mr. LEHRICH. Have you got the Exhibit 37, the declaration of policy in the May 17, 1933, letter?

Mr. ISSERS. Exhibit 37 is the one.

Mr. GLICKFELD. It is Exhibit 46, your Honor, the form letter that was sent out.

The COURT. Yes; I have seen any number of those.

Q. Do you remember receiving this letter from the
465 Soft-Lite Lens Company about the date indicated, May 17, 1933 [handing to witness]?—A. I think I do remember this. That was in 1933, was it?

Q. Yes. You are familiar with the Soft-Lite stock price list?—A. I think I am, sir.

Q. Do you remember seeing pages 17 to 23 describing the Soft-Lite sales plan [indicating]?—A. I don't make up the bills there.

Q. Do the price lists come to your attention? That is a photostat of a price list.—A. Yes; that seems to be.

Q. Do you remember receiving copies of those?—A. Yes, sir.

Mr. LEHRICH. That refers to Exhibit 37. That is all.

Mr. SEYMOUR. No questions.

JOSEPH F. RAMEL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. ISSERS:

Q. Mr. Ramel, where do you live?—A. Parkville, Missouri.

Q. Near what city is that?—A. Near Kansas City.

Q. Are you in business in Kansas City?—A. Yes, sir.

Q. In what business, sir?—A. Wholesale optical business.

466 Q. What is the name of the company, sir?—A. Barnett & Ramel Optical Company.

Q. How long has your company been in business?—A. 21 years.

Q. Approximately how much business did you do dollar wise—volume?—A. Over half a million per year.

Q. In 1930 approximately how much business did you do?—A. Roughly about $200,000.

Q. When was the first time that you had any conversations with any representative of the Soft-Lite Lens Company, to your best recollection?

Mr. SEYMOUR. I assume my objection applies to this witness's testimony also.

The COURT. Yes. Mr. Seymour, you can assume that will apply to all witnesses, until we get to the point where we consider generally whether the conspiracy has been established, and I will wait for Mr. Isseks to tell me that he thinks he has arrived at that stage.

Mr. ISSEKS. I think, your Honor, I have done it already, but I do not want to get into great detail.

The COURT. Meanwhile I will reserve it, until you formally come and tell me that you think you have established the connection.

Mr. ISSEKS. I do not think I can add much more than I

467 got from the next to the last witness. I do not expect these defendants to tell me that they sat around in a room. I may have some witnesses to tell you that at least they sat around in a room. I am fortunate enough to have one man who sat in the room.

Mr. SEYMOUR. Are we arguing this now?

The COURT. All that is off the record. I do not listen attentively to that.

Q. (Read by reporter.)—A. Early in 1929.

Q. And with whom, sir?—A. With Mr. Nat Singer.

Q. What was the substance of the conversation, and where if you can tell us?—A. It was at Kansas City; the general offices of our plant. He came there trying to get us to sell Soft-Lite lenses at that time and take on a distributorship for them, from his company direct, from the Soft-Lite Lens Company. We had had a B license previous to that issued to us from the Riggs Optical Company, and we were using Soft-Lites at the time, but his requirements were so stiff that we could not accept his proposition when he first came, his first trip out.

Q. I want to get this clear. Were you a stock licensee before that, a retailer?—A. Yes; we were a licensee by the Riggs Optical Company.

Q. That is, you were buying from them?—A. Yes.

Q. As a retailer?—A. No; as a wholesaler. They have what they call a B license system that we qualified for by
468 buying a certain number of pairs from the Riggs Optical Company.

Q. At that time?—A. Yes; and Mr. Singer came out and wanted us to buy 2,000 pairs and become an AA licensee. The requirements were too stiff for us to handle it in one month's time. He said, "Maybe we can fix that up later some way or other." He said, "You fellows should be selling Soft-Lites." He was very nice to us; we had lunch together, and he went away and said, "I will see what we can do about this." Some time later that summer, I don't recall just how long it was, he came back in possibly three to six months time, and we made an arrangement whereby we would buy the 2,000 pairs of Soft-Lite from his company direct, and pay him over a six-month period, and if we could pay it over six months we could qualify on that basis. That is what we were holding out for at that time. We purchased them and paid for them by that time.

Q. How long a period were you a Class A wholesaler?—A. Class AA. That lasted I think until some time in the spring, shortly after Bausch & Lomb took us off their list. They began to bear down on us then——

Q. Now just a minute, let us go slow on this.

Mr. SEYMOUR. I do not want him to go so fast, and I object to it as incompetent, irrelevant, and immaterial. He is not re-
469 ferring to any conversation. He is not stating what happened.

Mr. ISSEKS. I move to strike it out myself.

The COURT. I will grant the motion.

Q. The record to date has shown the company to have been a distributor and Class A wholesaler. Is there some confusion in your mind as to the nature of the classification?—A. No.

Q. You were a Class A wholesaler during a period of time?—A. Yes; AA.

Q. That is your understanding?—A. Yes.

By the COURT:

Q. That is the top classification?—A. Yes.

Q. That made you a distributor buying direct from Soft-Lite?—A. Yes.

Mr. LEHRICH. I think I can clear this up. He was a stock retail buyer from the Riggs Optical in the beginning, and then he became a Class A wholesaler, not a distributor.

The COURT. Never became a distributor.

Q. There are various classifications by different manufacturers; that is why you are confused?—A. That is right.

The COURT. He would get it at a slightly different price?

Mr. LEHRICH. Yes; he could have bought from other
470 distributors, because there was a differentiation in price.

By Mr. ISSEKS:

Q. While you were a Class A wholesaler did you have any conversations with representatives of the Soft-Lite Company?—A. Yes.

Q. Did you have any conversations with regard to the price——?—A. Yes.

Q. Please let me finish. The price at which your company as a distributor, or wholesaler, rather, should sell to the retailers?—A. Yes.

Q. With whom, sir?—A. I had that discussion with Mr. Landis practically every time he called on us.

Q. Did he call occasionally?—A. Yes. Then later Mr. Summers came out after he quit coming.

Q. And you had a similar conversation with him?—A. Yes.

Q. And anybody else?—A. Mr. Dean Truex, he came out. They would discuss price, every time anybody would come.

Q. What did he tell you?—A. What did they tell me?

Q. As to the price to the retailer?—A. That was controlled. They told us that price was controlled. Of course that was our big sales argument to the retailer; since the price was controlled they would not meet any competition—eliminated chiseling competition. That is why it was a good product to sell.

471 Mr. LEHRICH. I move to strike that out.

The COURT. Yes; I grant the motion. Just say what they said to you.

Q. What did these gentlemen say to you?

The COURT. I won't press you to tell us which gentleman said it on a particular occasion, because we would only be getting a haphazard response if we tried that, but in general what did these Soft-Lite gentlemen tell you on these visits, as to the prices to be charged by you to the retailer? That is your question?

Mr. ISSEKS. Yes: and the first part of the answer was responsive. May I have it read?

(The reporter read the answer referred to, as follows: "A. That was controlled. They told us that price was controlled.")

Mr. ISSEKS. Your Honor, I would like that part of the answer to stand, if I may.

The COURT. All right, go on from there.

Q. Did they say anything else besides that price was controlled?—A. Yes; there was a lot of conversation about the controlling of that price.

Q. What did they say? Only tell the Court what they said, and what you said, too.—A. And they would see to it that the chiselers did not get them.

Q. Did they say anything else?—A. May I ask a
472. question, on that answer?

The COURT. Yes; if he is willing to answer it.

The WITNESS. Well, I didn't get the question correctly.

Q. Let me repeat it, sir. During this period of time that you were a Class A wholesaler and these three representatives came to see you——

The COURT. At different times.

Q. At different times, as you testified—they talked to you, you said, about prices to the retailers, and you have given us certain testimony. Did they say anything else than you have already said?—A. No; other than general conversation.

Q. Did they tell you in substance that you had to sell to the retailer at a certain price?—A. Oh, yes.

Q. They did say that?—A. Yes.

Q. On more than one occasion?—A. Oh, yes.

Q. And did you follow that practice?—A. Yes, sir.

Q. Was anything said by any one of these three gentlemen at different times with regard to the prices from the retailers to the consumer?—A. Yes.

Q. What did they say? Only what they said, please.—A. Those prices had to be controlled, and they were to be sold on single vision $3 over white lenses, the prevailing stand-
ard white lens prices, which was approximately $9 at
473 that time, and on the bifocals lenses it was to be $4 more than the prevailing standard price on bifocal, meaning Kryptok bifocal price, of course.

Q. Did they ask you to pass that advice on to your retailers?—A. Oh, yes.

Q. And did you?—A. Yes.

Q. At any time while you were a Soft-Lite Class A wholesaler did you have any conversations with any of these three gentlemen with regard to your activities in connection with other matters?—A. Do you mean regarding selling other products?

Q. Yes.—A. Yes, sir.

Q. See if you can tell us approximately when, and who was there, and who said it.

Mr. SEYMOUR. I object to this as incompetent, irrelevant and immaterial. What difference does it make what the conversations were on other topics?

The COURT. I do not understand its relevancy.

Mr. ISSEKS. Your Honor will recall that Mr. Singer testified that one of the reasons this company was taken off the list was that they sold another tinted lens.

The COURT. I see what you mean.

Mr. ISSEKS. That is all I am talking about.

The COURT. A competitive product?

474 Mr. ISSEKS. Yes. But if I used the word "competitor" I would have two objections.

The COURT. Do you still press it?

Mr. SEYMOUR. No; except my general objection.

Mr. ISSEKS. If I used the word "competitor" I would get it, and you would sustain the objection.

The COURT. That is right.

Q. The question now is, did you talk to these three gentlemen from Soft-Lite about other optical products?—A. Yes.

Q. And what did they say to you; and if you can, give us a time, please.—A. The time was shortly after Bausch & Lomb took us off the list in '32. I think Mr. Summers was first——

Mr. SEYMOUR. Your Honor, I do not want to have to try that issue here.

The COURT. I will strike out the words "the time was shortly after Bausch & Lomb took us off the list," and leave in the words "in '32."

Mr. ISSEKS. I am going to ask him a question and your Honor can rule on it.

The COURT. Have you finished your answer?

The WITNESS. No.

The COURT. Let him finish it.

The WITNESS. At that time Mr. Summers I believe was
475 the first one out to consult us about threatening to take us off the list, and he said that we must quit selling Velvet-Lite lenses.

Q. What were Velvet-Lite lenses?—A. The Velvet-Lite lens was a similar tint, flesh tint lenses we were selling, produced and manufactured by the Titmus Optical Company.

Q. That did not have any price control, did it?—A. No, sir.

Q. Were you selling any others?—A. Then Summers came out, and he was a gentleman about it and he was very nice. We dickered back and forth, and we told him no, we could not do that, because our Velvet-Lite business was too sweet, we could not give it up. The next gentleman came out I think was Mr. Landis himself;

on that occasion, and he talked to me about the same situation, telling me we had to give up the Velvet-Lites, and he wanted to know about the Azure-Lites we were selling also, and he wanted us to give that up. A blue-tinted lens put out by Azure Lite Lens Company, he wanted us to stop that.

Q. They are located where?—A. In New York City.

Q. Was that price controlled?—A. Yes.

Mr. LEHRICH. I object.

The COURT. I will sustain the objection and strike out the answer.

476 The WITNESS. We told him we could not give up the sale of Velvet-Lite in the various tints, and he said they did not care about Cruxite, but we could not sell both. We said we could not do it. He said, "Joe, you are going to be sorry about this; I hate to see you taken off the list." Now those may not be the exact words.

The COURT. That is the substance of the conversation?

The WITNESS. Yes; Mr. Singer came out some time later. This is over a period of three or four or five months. I recall it very distinctly; I was home with the "flu," and Mr. Singer called me up on a Sunday night and I had to get out of bed to answer the telephone. He was at a downtown hotel, he told me, and he told me unless we absolutely gave up the sale of the Velvet Lite lenses we would be cut off the Soft-Lite list. I asked him if he would write me a letter to that effect, because I told him I did not think it was nice when I was sick to call me up and tell me that. I asked him if he would come down to the office to see me, that I would be in in a day or two, and he said, "No; consider yourself off the list." He said, "I am sorry for you," or something like that, and that is all.

Q. You were subsequently or shortly thereafter taken off the list?—A. Oh, right then. It really hurt us, too.

Mr. SEYMOUR. I object to a statement whether it hurt him or not.

The COURT. I will sustain it.

477 Q. Were you selling Soft-Lite lenses at that time?—A. Yes.

Q. Approximately how many, would you say?—A. I would say between two and three hundred pairs a month.

Q. You have been unable to sell Soft-Lite lenses since then?—A. No.

Q. The answer is that you have been unable to?—A. That is right.

Q. In 1932, just before the visit of Mr. Summers—he was the first one, wasn't he?—A. Yes.

Q. About the fact that you were distributing Velvet Lite lenses. Had something else happened in connection with your relations with Bausch & Lomb?

Mr. SEYMOUR. Objected to as irrelevant, incompetent, and immaterial.

The COURT. So far the question is simply did something happen. I do not know whether it is going to be relevant or not. It might be, so I will overrule your objection to that question, and see what happens after that.

Q. You were a distributor?—A. Yes.

Q. Up until some time in 1931 and the early part of 1932, of Bausch & Lomb?—A. Yes.

Mr. SEYMOUR. I object to that as having no bearing on this case.

The COURT. I will sustain that.

478 Mr. ISSEKS. May I be heard? He was taken off the Soft-Lite list almost immediately after he was taken off the Bausch & Lomb list.

The COURT. Is there a casual relation between the two?

Mr. ISSEKS. Your Honor can make a fair inference, with a conspiracy charged between these people, with their relations, where one followed the other. There was an exchange of wholesalers lists throughout the entire period, and they were putting people on the lists of each other, and there is a casual connection.

The COURT. I will take it subject to connection at the proper time. I am not sure about the answer at this time.

Mr. SEYMOUR. Subject to the objection and connection.

The COURT. Yes.

Mr. ISSEKS. That is all I offer it for.

Q. You were a wholesaler of Bausch & Lomb, were you not, up to that time?—A. Yes.

Q. You were doing a substantial amount of business in their product?—A. Yes.

Q. You were then taken off their list, were you not?—A. Yes.

479 Q. That was just shortly prior to the time Mr. Summers came out and complained about the fact that you were selling Velvet-Lite?—A. Yes.

Mr. ISSEKS. I think that is all, your Honor, except that at the proper time, in a brief or otherwise, I would like to refer to the date or period that we show this company was taken off the wholesalers.

Cross-examination by Mr. LEHRICH:

Q. Do you remember the date when you were made a Class A distributor?—A. Not the exact date; no.

(Short recess.)

Q. Mr. Ramel, I think I understood you to say to Mr. Isseks that your company was taken off the Bausch & Lomb list, wholesale list, in 1932.—A. As near as I can remember.

Q. And you know you were taken off the—or rather Soft-Lite discontinued doing business with you as a wholesaler on February 20, 1934; do you know that?—A. I do not recall the dates.

Q. I will show you this letter and see whether this refreshes your recollection [handing to witness].

Mr. LEHRICH. I am showing him a copy of Exhibit 24, your Honor.

A. This has reference to the retail license issued to us by the Riggs Optical Company.

Q. I think it was agreed by counsel here that the word
480 "retail" was a mistake. I show you that letter.

Mr. ISSEKS. The Government will stipulate when it was taken off.

A. That is not true; it was before 1934.

Mr. ISSEKS. The Government will stipulate they were taken off February 20, 1934.

The COURT. May we have a stipulation as to when they were taken off the Bausch & Lomb list?

Mr. ISSEKS. I am going to ask counsel for Bausch & Lomb to be kind enough to produce the notification when they were taken off the Bausch & Lomb list.

The COURT. Can we have a stipulation on that?

Mr. SEYMOUR. The witness says 1932.

Mr. ISSEKS. He may be mistaken. May I ask one question?

The COURT. These dates get pretty confusing with the lapse of time, and I would much rather not have him examined on them, but consider the dates as those in the records, rather than getting them from the witness. If it can be readily ascertained.

Mr. SEYMOUR. If it is not available here I will check in Rochester.

Mr. ISSEKS. And I will ask the witness after he gets back if he will be kind enough to look at his correspondence and send
481 it to the Government, and then there will be no dispute about the authenticity.

The COURT. I suppose not.

Mr. ISSEKS. Look in your files, if you will, and send us the original from Bausch & Lomb as to when you were taken off, and Mr. Seymour will check his records, and we will have the exact dates.

Mr. LEHRICH. We at least agree on the date we discontinued business with Barnett & Ramel as a wholesaler, and that was in February 1934.

The COURT. February 20, 1934, according to this record.

Q. Mr. Ramel, your present recollection is that Bausch & Lomb stopped doing business with you in 1932?—A. As near as I can recall.

Q. It is conceded that we stopped doing business with you, Soft-Lite Lens Company, in 1934. Now for some time after Bausch & Lomb discontinued doing business with you you continued to get Soft-Lite lenses on the same basis as you got them before Bausch & Lomb discontinued their relationship with you; is that correct?—A. For just a little while.

The COURT. I do not know what you mean by that. Weeks, months or years?

The WITNESS. I mean about 90 days, or three or four months.

482 Mr. LEHRICH. In view of the fact that we are going to try to get the exact date, I do not think there is any use pressing him.

The COURT. I do not see any point to it.

Q. Mr. Ramel, the Soft-Lite Lens Company furnished you with price lists, you said in your direct testimony. Those were price lists showing what you as a Class A wholesaler would have to pay the Soft-Lite Lens Company for the lenses you bought from them; is that correct?—A. That is right.

Q. And they also furnished you price lists to distribute amongst your customers?—A. That is right.

Q. Showing what they were expected to pay you for lenses?—A. That is right.

Q. And similar price lists that you distributed among other customers; is that right?—A. Yes.

Q. You signed no agreement of any kind with Soft-Lite Lens Company, did you?—A. No; not originally.

Q. When you placed your order to qualify as a Class A wholesaler on sending in the order for the required quantity, you automatically became a Class A wholesaler; is that right?—A. Yes.

Q. Did you ever get a price list from the Soft-Lite Lens Company telling you what to charge consumers? You do retail dispensing, don't you?—A. Yes.

483 Q. Did you ever get a price list from the Soft-Lite Lens Company telling you, or suggesting to you what price to collect from the consumer, as a wholesale or retail dispenser?

Mr. ISSEKS. Written prices?

A. Do you mean written prices, by mail?—No, sir.

Q. By mail or any other way.—A. Yes.

Q. Did they give you written prices?—A. No; verbally the salesmen always told us what to charge.

Q. Told you what they thought you ought to get?—A. Yes, sir.

Q. For the Soft-Lite lenses, when you dispensed them as a retailer?—A. That is right.

Q. Never had you sign any agreement that you would carry out such an arrangement?—A. Not to my knowledge.

Q. Gave it to you by way of a suggestion?—A. Yes.

Q. Now when you had the talk with Mr. Landis and Mr. Singer about your activity as a Soft-Lite wholesaler, didn't they complain to you that they were not getting any distribution of Soft-Lite lenses because you were concentrating your efforts on six other rose-tinted or pink-tinted lenses? Do you remember such a conversation?—A. No, sir.

Q. You said Mr. Singer told you, or Mr. Landis told you, that if you sold Velvet-Lites he would stop selling you.—A. Yes.

484 Q. Did Mr. Landis or Mr. Singer tell you that it came to his knowledge that you were selling Velvet-Lites, Rose-Lites, Cruxite, Mellowtone, Rest-Lites and Soft-Ray, and that you were publishing and featuring all six of these rose-tinted lenses and were not mentioning in any way that you were selling Soft-Lite lenses? Do you remember that?—A. No, sir. We published that price after we were taken off the list.

Q. After?—A. I am reasonably certain of that.

Q. Are you certain of it?—A. Not certain without checking the records; no, sir.

Q. I will help you check it in a minute. You remember selling six pink-tinted lenses?—A. Yes, sir; that is right.

Q. You had no trouble getting them in the market, and could sell them anywhere you wanted?—A. Yes.

Q. And that continued after Soft-Lite Lens Company stopped doing business with you; you continued to get those six lenses?—A. Yes.

Q. And in spite of the fact that Soft-Lite Lens Company stopped doing business with you your company grew from $200,000 to $500,000 in the period mentioned?—A. That is because we worked hard.

Q. You worked hard, and you did it without Soft-Lite lenses?—A. Yes.

485 Q. You did not work any easier when you had the Soft-Lite lenses, you worked just as hard?—A. We had to back up and start over. It probably would have been twice as big if we had the Soft-Lite lenses.

Q. You had Soft-Lite lenses from 1927 to 1934. Did you double your gross every year?—A. Yes.

Q. Do you have your figures here?—A. No; but I would say yes.

Q. Your Soft-Lite business represented half of your gross each year?—A. No; but it was a means of getting business, a means of getting to the doctors, which we could not otherwise do.

Q. Your purchases from us each year were about $1,300, weren't they?—A. I do not recall.

Q. And on a $200,000 business the resale of $1,300 worth of merchandise represented a small part of your business?—A. We bought 2,000 pairs to start with, and with the 1,300 you have over $3,000, and that is a lot of rough blanks to manufacture from the raw material, from a 50 or 60 cent blank to a $4 lens. It means a lot of money.

Q. And the resale price represented a small part of your business, the gross business?—A. It represented a good part of it.

Q. To refresh your recollection the last person you saw
486 shortly before you got your notice of cancellation was Mr. Nat Singer?—A. I talked to him on the phone. I did not see him.

Q. I refer to that conversation. He was the last person you talked to?—A. Yes.

Q. Didn't he tell you in that conversation unless you quit featuring and pushing all the other lenses and unless you increased your efforts behind Soft-Lite lenses, he would stop doing business with your company, because the Soft-Lite Lens Company was not getting a break from you? Did he use that term?—A. No; he said Velvet-Lite.

Q. He said Velvet-Lite?—A. Velvet-Lite was the bone of contention.

Q. I show you this price list, and call your attention to the date December 1933. Your company issued that price list [handing to witness]?—A. Yes; I acknowledge that price list. Chalnex Lens prices, 1933.

Mr. ISSEKS. We have no objection to it.

The COURT. Are you offering it in evidence?

Mr. LEHRICH. Yes.

(Marked Defendants' Exhibit "B.")

Q. Did you get an opportunity to look at that price list and ascertain whether the six names of rose tinted lenses I called off before were advertised by you on that price list? Did you have a chance to look at it a minute ago?—A. No; I did not have a chance to, but I would be glad to.

486-A The COURT. On the inside, on the left side of the page [handing to witness].

The WITNESS. These were advertised after we were taken off the Soft-Lite list.

487 Q. Well, Mr. Ramel, it is conceded here by counsel based on written records; based on the notifications that were sent to you in 1934, that you were taken off and that we stopped doing business with you on February 16, 1934. There is no doubt about that?—A. There is a dispute about that. I never acknowledged that letter and I never saw such a thing on that date.

Q. You testified you got a notice shortly after Nat Singer spoke to you. Now you saw the two letters and you got the notice?—A. No; I testified I asked Mr. Singer to write me.

Q. You say you never got a notice?—A. No, sir; not to this day.

The COURT. The Government made a concession that the witness is not going to stand by it. Have you any records, Mr. Lehrich, to show this witness, that covers the period in issue?

Mr. LEHRICH. From 1932?

The COURT. From February 1932 to 1934.

MR. LEHRICH. Yes. As a matter of fact we have an order he sent us in 1934 and we wrote him a letter and said: "Your wholesale arrangement with us is cancelled and we will ship you no more."

The COURT. Do your books show you did business with him in 1933?

488 The WITNESS. I tried to get back on the list.

Mr. LEHRICH. Yes; I understood the stipulation was that there was no dispute as to the correctness of any of these documents, because otherwise it puts me to the trouble of producing a witness to show that she mailed the notice and that it never came back.

The COURT. It is perfectly possible for the Government, for the purposes of conceding the fact, to accept the stipulation, which the witness has not got to adopt; and therefore you cannot proceed on the assumption that the stipulation is binding on the witness.

Mr. ISSEKS. I will stipulate any document that counsel produces any time is authentic unless we have something to the contrary. I do not know anything to the contrary other than the witness, of course, was there. Counsel showed us a letter dated February 1934. We cannot dispute it. Whether or not it was received I do not know.

The COURT. Is it possible it was sent after a long lapse during which no business was done?

Mr. Isseks. That may have happened, too.

Mr. LEHRICH. As a matter of fact there are two papers in evidence offered by Mr. Isseks; one dated February 16, 1934,

489 rejecting his order and saying, "Please refer to your orders FO4, FO5 and FO6. Inasmuch as your firm is no longer a wholesale licensee, we shall be unable to fill these orders, and therefore we are cancelling them," and then one of February 20th, which is the formal notice and notification, and that is the one that said that the retail license granted to him is hereby revoked.

The COURT. That does not necessarily dispose of the witness, because when the witness possibly sent an order and your client

sent a letter saying, We cannot do it, and saying he is not a wholesale licensee any longer, meaning he has not been, you might have then sent him a notice to follow this letter. I don't know what the facts are.

Mr. Isseks. May I make a suggestion. You will recall Government's Exhibit 24 refers in two places to a license; one a retail license and the other—it may be Soft-Lite licensee—I do not know, but I think we ought to try to find out. There may have been a period of time when they were treated as a prescription licensee, just as he says he was at one time, or a stock licensee.

The Court. The witness indicated to me he thinks he can clear it up if Mr. Lehrich is willing to let him do that, and I will give him the opportunity.

Mr. Lehrich. Yes.

490 The Witness. This letter is addressed to our branch office in Frisco, who sent in this order probably unbeknownst to the home office or anything about this notice letter here, and this letter here I have no knowledge ever receiving this in the Brandt Building, and this was addressed to the building in 1934, and we had moved out of there long before that day, and we did not get this letter, and we were taken off this list while we were in the Brandt Building, and we moved out of there before 1934.

The Court. I will ask counsel for the defendant and counsel for the Government to get together on the question whether any business was done between Soft-Lite and this witness's company during the years 1932, 1933 and 1934, and I will ask you to come in and stipulate that some time tomorrow.

Mr. Isseks. May I ask one question?

The Court. Mr. Lehrich has him now.

Mr. Lehrich. I have no objection.

By Mr. Isseks:

Q. Can you fix the date when you were sick in bed with the "flu" and you were taken out of bed on that telephone conversation?—A. No; I cannot recall that.

Q. I would like to ask the witness if he can fix the date—

A. I can fix the date if I can refer to my files,

491 because the Federal Trade Commission man was out there and there was considerable conversation and records at that time and if I am not mistaken the Federal Trade Commission has the letters, and I turned them over to Judge Carlton Smith in this case when we were taken off the Soft-Lite list, and I am sure Judge Carlton P. Smith wrote to the Federal Trade Commission at Washington and I think the records will speak for themselves the time that we were taken off the list.

By Mr. LEHRICH:

Q. You say you got no written notice when you were taken off the list?—A. If there were any records, they would be there, sir.

Q. You now dispute that you got this price list, Defendants' Exhibit B, out and distributed it amongst your trade before you talked with Nat Singer?—A. Afterwards.

Q. I say you dispute that you got it out before?—A. Yes, I do.

Q. As a matter of fact, though, you were selling all these lenses before that conversation?—A. Yes, sir—not all of them.

Q. Well, you mean after Soft-Lite discontinued its business you took on additional lines?—A. Yes. We did not have Soft-
492 Lite and we adopted that name you saw printed, Soft-Ray, and that is what refreshes my memory because we would not sell Soft-Ray while we were on Nat Singer's list selling Soft-Lite.

Q. Nat Singer says he called your attention to the fact that he had a dispute with the Schulte Optical Company about the use of the trade-mark Soft-Ray, and he did not want you as distributors selling a lens under the name Soft-Ray while you were selling Soft-Lite lenses?—A. I don't remember any conversation with Schulte Optical.

Q. Did you say Schultz or Schulte?—A. Schulte.

Q. Mr. Singer said he told you he was having a dispute with Schulte about a trade-mark, Soft-Ray?—A. No, that came from Wahlgren-Carlsen Optical Company, and they were using that name when we bought it from the Federal Court's Receivers' sale. We bought that from the Federal Court in Missouri. We were off the Soft-Lite list at that time.

Mr. ISSEKS. Maybe you can fix the date of that, when you bought that.

The WITNESS. When we bought that was in April on the Receiver's sale.

The COURT. What year?

The WITNESS. April of 1934 was when we bought that plate.

493 By Mr. LEHRICH:

Q. You are sure about the date when you bought the trade name Soft-Ray?—A. Yes, we were using the name all the time up until that time and then when we bought out the Wahlgren-Carlsen place they were using it.

Q. When you said before you did not dare use it while somebody else owned it——A. No, while we were on Soft-Lite's list. That is when we did not dare use that word.

Mr. LEHRICH. All right. That is all.

Redirect examination by Mr. Isseks:

Q. Was there any other event taking place——

Mr. Lehrich. May I interrupt a minute? May I suggest this witness stay here until we get a chance to clear this up?

Mr. Isseks. He will be here tomorrow.

The Court. He might as well be here tomorrow.

Q. You are willing to be here, aren't you?—A. Yes, sir.

Q. And you can get some information over the telephone. We will let you use our phone and you can call your office as we would like to fix the dates. Can you fix any other event that took place, if you know, on the day you talked over the telephone to Mr. Singer when he told you that you would have to stop putting up Velvet Lite, or what else?—A. Either the day before, or
494 that very afternoon, he talked to Mr. Barnett, who was at our office, in our office as near as I can remember, himself personally, and Mr. Barnett told him to call me up, that I was home sick.

Mr. Seymour. I do not quite understand how this witness can testify what Mr. Barnett told him.

Mr. Isseks. I move to strike it out.

The Court. Very well.

Q. Was there a meeting that took place in Kansas City?—A. Mr. Singer was at the hotel having a Soft-Lite sales meeting at that time with the Riggs salesmen, and all the Soft-Lite distributors or Class A licensees.

Q. And you were included but were sick?—A. No, we were not invited.

Q. You were not?—A. Not to my knowledge.

Q. Who told you that?—A. One of the Riggs salesmen.

Mr. Isseks. I would like to see if we can find out that date. Perhaps counsel have the date or can find out the date of the meeting in Kansas City at a hotel. The witness has put it 1932, but there cannot be more than one or two meetings each year. I am anxious to find the date.

The Court. I think counsel will make an effort to get the date but the simple information I would like to get would be when was the last purchase made in the regular course of busi-
495 ness between Mr. Ramel's company and the Soft-Lite Company—the date of that transaction.

Mr. Isseks. We are going to ask Mr. Ramel between now and when court convenes if he can get the records of his company.

The Court. I assume the Soft-Lite Company has its ordinary ledger records from 1932 on?

Mr. Lehrich. Yes, we have the ledger records.

Mr. Isseks. No further questions. The Government calls Mr. Smith.

CARROLL L. SMITH, called as a witness on behalf of the Government, being first duly sworn, testified as follows.

Direct examination by Mr. GLICKFELD:

Q. Where do you live, Mr. Smith?—A. Houston, Texas.

Q. Are you in business there?—A. Yes, sir; Gulf Optical Company.

Q. What is the nature of the business of the Gulf Optical Company?—A. Wholesale optical business.

Q. Is that a corporation?—A. Yes, sir.

Q. Are you a substantial stockholder?—A. Yes.

Q. When was that company organized?—A. January 10, 1939.

Q. And what was your business prior to that date?—A. Well, before that, for the last six years, I had been
496 manager for Riggs Optical Company, in Houston, except for a period of about two months when I was in the retail business.

Q. And prior to that time?—A. I had been in the wholesale business in Indianapolis, Indiana, under the name, Fox Optical Company.

Q. During the time you were branch manager for Riggs, was that branch selling Soft-Lite lenses to retailers?—A. Yes, sir.

Q. And how did you determine your prices which you charged retailers for Soft-Lite Lenses?

Mr. SEYMOUR. I object to that as incompetent, irrelevant, and immaterial: the operation of this witness' mind or the operation of his mind on the operation of that business.

The COURT. I will let you reframe your question. What you are driving at is whether he had made any agreement or received any instructions.

Q. Did you receive any instructions concerning the prices which you had to use in the sale of Soft-Lite lenses to retailers?—A. Yes, sir.

Q. From whom did you receive those instructions?—A. Well, the instructions that I got, being a new man in a new organization, Riggs, I got all my instructions from Mr. Mitchell.

497 Q. Who was he?—A. He was the district manager for Riggs, Southwestern district.

Q. What did he tell you?—A. He told me the Soft-Lite price list that we had to the retailer had to be just exactly as that was and that our instructions were that we should tell the retailers that they had to maintain a retail price of $9.00 per single vision lens, $15 for duo-site and $20 for Panoptik Soft-Lites.

Q. The second part of your answer concerning the $9, the $15, and the $20 prices, were prices to be charged by your retail customers to their customers?—A. That is right.

Q. And in the sale of Soft-Lite lenses to your retail customers did you carry out the instructions of Mr. Mitchell concerning the $9, the $15, and the $20 resale prices?—A. Yes, sir.

Q. How did you carry out those instructions?—A. Do you mean to the retail customer?

Q. Yes.—A. We done quite a bit of dispensing business up there; in other words, we took care of oculists' patients and when they came up with a prescription we charged $9 for a pair of single vision lenses from our dispensing counter, or if it happened to be a bifocal and we could sell Panoptiks, we would charge $20, and if it was a cheaper bifocal, we sold the duo-site at $15.

Q. That is when you were doing a wholesale dispens-
498 ing?—A. Well, we do dispensing for the oculists.

By the COURT:

Q. You mean a man would come up with a prescription and buy a single pair of lenses?—A. That is right.

Q. I would call that a retailer.—A. Yes, sir.

Q. You were selling it to the wearer direct?—A. Yes, sir.

By Mr. GLICKFELD:

Q. And did you carry out Mr. Mitchell's instructions when you sold Soft-Lite directly to the retailer and not to the consumer?—A. Oh, yes. We had to live up to that list price and that is all there was to it, because we had a system whereby every job we billed out from our particular branch we had to make out an analysis sheet on which we put down what we used and the type of lens it was and the foci it was and the price we charged on it.

Q. Did you advise your retail customer what price he had to charge in his sales of Soft-Lite lenses to the same public?

Mr. LEHRICH. I object to the question in that form.

Mr. SEYMOUR. I object to it, too. It is too general; have the date fixed, and he ought to give time and place.

499 The COURT. Give the man a chance. All he was asked was whether he issued any advice, and if his answer is "yes," then we go into the balance, and if the answer is "no," it stops at the brink.

A. Well, I would not say I gave them advice. I simply stated the policy which Riggs insisted the managers uphold.

The COURT. Your answer is "yes."

The WITNESS. Yes, sir.

The COURT. Now you can pursue your inquiry.

Q. For how long a period did you do that?—A. From July of 1933 to September of 1939.

Q. And did you ever do anything to carry out the price which the retailer was to charge to the consumer?

Mr. LEHRICH. That is objected to.

The COURT. I will sustain the objection. The question is not intelligible to me.

Q. Do you know whether your retail customers charged to their customers the $9, $15 and $20 prices on Soft-Lite lenses?—A. Well, I have no way of saying that I do or I do not because we assumed after we told them that under the penalty of upholding these prices if we found anything to the contrary, we would take them off the list. They would lose the right to sell Soft-Lite lenses and we assumed they were going to stick to the prices because we could not be a watchdog for all our retail customers.

500 Mr. SEYMOUR. I move to strike it out as incompetent, irrelevant and immaterial.

The COURT. Which do you move to strike out?

Mr. SEYMOUR. The part of what they told their customers. That is not responsive, having in mind your Honor's ruling of what he told his customers without fixing time and place. That is improper.

The COURT. I understand the witness testified that during the period from 1933 to 1939 he instructed or he told the customers of the Gulf Optical Company, the retail customers——

The WITNESS. Riggs Optical.

The COURT. The Riggs Optical, that they must charge $9, $15 or $20 per lens or else be taken off the list.

Mr. SEYMOUR. He was testifying in response to a question whether he knew they adhered to it. The question does not call for any such answer.

The COURT. I will grant you that, but that is disposed of by a ruling I made earlier in the day. As far as the answer itself is concerned, I will overrule your motion to strike out because it is relevant to the issues of the case.

Mr. SEYMOUR. Exception.

501 The COURT. I correctly summarized your answer, did I not?

The WITNESS. Yes, sir.

Q. Did you ever advise Mr. Mitchell or any of your retail customers that they were not observing the $9, $15 and $20 resale prices?—A. In one instance only.

Q. And do you recall that instance?—A. Well, that was for a doctor by the name of Eaganhouse. I would say it was in about 1936. A friend of mine went to him and got a pair of glasses made and he insisted on Soft-Lite——

Mr. LEHRICH. I object, if your Honor please.

The COURT. I will entertain a motion to strike that part of the story out. You tell us only what you told Mr. Mitchell.

The WITNESS. Well, I told him that this man had sold Soft-Lites for—well, I will have to go around and answer a little dif-

ferently. I will have to answer the question this way: that this doctor sold my friend a pair of glasses which he said were Soft-Lites and charged him for Soft-Lite and they were Crookes lenses.

The COURT. That is what you told Mr. Mitchell.

The WITNESS. Yes, sir.

The COURT. What did Mr. Mitchell do about it?

The WITNESS. I suggested Mr. Mitchell, the manager of
502 Riggs, that this man be taken off the Soft-Lite list and Panoptik list and Loxit list, and such was his action.

By Mr. GLICKFELD:

Q. Did there come a time, Mr. Smith, when you asked Soft-Lite Lens Company to be one of their distributors of Soft-Lite lenses?

The COURT. Before you answer, are you referring to the witness as an employee of the Riggs Company, the Gulf Company, or the retailer that he testified that he was for a time, or the wholesaler he was for a time?

Q. Did the Gulf Optical Company ever request to become or to be made a Soft-Lite wholesaler?—A. Yes, sir; for the last two and a half years they have repeatedly made the request to be classified as a distributor.

Q. To whom were the requests made?—A. The first request was made when I was going in business.

Q. When was that?—A. I wanted to open up in January of 1939, and the Riggs Optical Company were holding a sales meeting in Chicago in December of 1938, and I flew up there, knowing that Nat Singer and Withington, the B. & L. representative, and Mr. Mitchell, my former boss, and all, would be there, and I asked Mr. Singer at that particular time if he would give me any consideration. Now if you would like me to tell you what
Mr. Singer said, I will go ahead and do so.

503 Q. Will you tell us, please, what Mr. Singer said?—A. Mr. Singer having the former experience with me in the Fox Optical Company, and we being a Soft-Lite distributor at that time, I think he felt a little kindly towards me personally in the new company.

The COURT. No. First tell us what he said. That is what you were asked.

The WITNESS. Mr. Singer said, "Smith, if I can get the rest of them here to agree, it is all right, I will put you on as a Soft-Lite distributor."

Q. Did he say who the rest were?—A. Well, it was almost—did not say, no, sir.

Q. Whom did you understand him to mean by "rest"?

Mr. LEHRICH. I object to that.

The COURT. I will let him answer if it was a word well known in the industry or a shorthand expression used between two people of the same business. I will let him explain what it means.

The WITNESS. Well, it was the Riggs representatives, which, of course, being a former employee of theirs I would almost more or less have to have the consent of those officials before he would permit me to have Soft-Lites.

Mr. LEHRICH. I ask that that be striken out.

The COURT. I will grant that motion. Just tell us what
504 you understand was meant by the words, "the rest of them"?

The WITNESS. That would be the Bausch & Lomb people and the Riggs Optical Company.

Q. And did you try to obtain the consent of the Bausch and Lomb people and Riggs Optical Company?—A. Yes, sir. I asked Mr. Withington to use his influence and in fact at Rochester, and see what he could do for me.

Q. Who was Mr. Withington?—A. He was the Chicago representative of Bausch & Lomb. In fact, he sent me a wire in January, I believe, of 1939, telling me that the answer was negative.

Q. And have you ever received a Soft-Lite wholesale license, or have you ever been made a Soft-Lite wholesaler?—A. No. About every three or four months I will write in to Ray Landis or Nat Singer and ask if they will give me some sort of consideration, and the first part of this year they congratulated me on having been made a Panoptik licensee, which, of course, permits me to use Panoptik Soft-Lites, and they intimated that in a subsequent letter they might entertain a consideration of me for a distributor and asked that I supply them with a financial statement of our concern, and wanted to know if I was financially able to handle $2,000 worth of glass, and my answer to that was
"Yes," if they liked, I would send them the money in ad-
505 vance, but so far to date I have had no yes or no to that particular request.

Mr. GLICKFELD. I do not want to ask the witness any more questions, but I would like to refer your Honor's attention to Exhibit 74 (F), which is the card, a Soft-Lite card, referring to Mr. Eganhouse's concern which the witness gave testimony regarding [hands exhibit to Court].

The COURT. That is the physician.

Mr. GLICKFELD. Yes, sir. No more questions.

The COURT. He sustains the endorsement on that card. I suppose if a physician gives you a non-Soft-Lite lens and charges for a Soft-Lite lens, you would hardly call him a reputable practitioner.

Cross-examination by Mr. LEHRICH:

Q. After you left Riggs Optical, you went in the retail business first, didn't you?—A. Yes, sir.

Q. And made an application for a Soft-Lite retail license?—A. Under the new name, because both of the partners that were going in with me were already licensees; that was John B. Beecham and Robert E. Nessmith.

Q. What was the new name?—A. Vision, Inc.

Q. What officer were you of that company?—A. Offhand now I think I was the president.

Q. And you signed the application?—A. I believe I did.

506 Q. Soft-Lite Lens Company issued a license to you?—A. That is right.

Q. After you were a retail licensee for some time you went into the wholesale business?—A. Do you want to know why?

The COURT. No.

Q. That is correct, isn't it?—A. Yes, sir; I went into the wholesale business.

Q. And you saw Mr. Nat Singer in Chicago?—A. That is right.

Q. A short time before you started in the wholesale business?—A. Well, I had not started yet. I was getting ready to start.

Q. That was before you started?—A. Yes, sir.

Q. You wanted to know whether he would take you on as a wholesaler?—A. Yes.

Q. He told you he wanted to know something about your operations before he would, didn't he?—A. No, he did not; I think Mr. Nat Singer knew me well enough to know what they were before.

Q. I am not talking about your personal reputation or integrity, but something about the progress or stability or assets of your business. Didn't he ask you about that?—A. Yes. I told him we were going to conduct a high grade first quality business.

Q. And he wanted to know something about your

507 quality and capital and all that sort of thing?—A. That is right.

Q. Then he told you he preferred to have you start and operate a while and that he would decide whether or not he would?—A. I disagree.

Q. He just told you if you could get the consent of "they" it would be all right with him?—A. That is right.

Q. You became a Panoptik licensee.—A. Yes, sir.

Q. Despite that the Soft-Lite Lens Company has not seen fit to take you on yet?—A. That is right.

Q. The Soft-Lite Lens Company asked you for a financial statement?—A. Yes, sir.

Q. And various other information?—A. Yes, sir.

Q. The last letter you got from Soft-Lite was when Mr. Landis made his next trip down to see you he would discuss the entire subject with you. Did you get such a letter?—A. I have a lot of letters. I do not recall that particular one. He said something about being down in that section some time or other.

Q. Was not the last letter a letter——

Mr. ISSEKS. What is the date?

Mr. LEHRICH. July 23rd.

Mr. ISSEKS. If you want July 19th—here is the original.

Q. Did you get a leter dated July 23rd, saying "You
507-A will be hearing from Mr. Landis upon his return to the office?"—A. That is right.

Q. And in prior correspondence you were told that when a representative of Soft-Lite came to your territory they would discuss this subject with you?—A. That is right. However, there is a previous letter there where he said if I would send him a financial statement of our firm, he would give some action.

508 Q. And the action you got they wanted to talk to you personally after they got your financial statement. Your financial statement showed principally fixtures, rather than cash; is that right?—A. I beg your pardon. Our financial statement shows what?

Q. Principally fixtures and machinery?—A. I think it shows accounts receivable there of about $30,000 and cash in the bank.

Q. Now when you were with Riggs Optical Company as branch manager, your company did what is called wholesale dispensing, but what is actually delivery of lenses to the customer?—A. That is right.

Q. And Mr. Mitchell was your superior?—A. That is right.

Q. He is an officer of the Riggs Optical Company, and Riggs Optical Company was willing to merchandise to the consumer?—A. That is right.

Q. And he told you, as your boss, what you should collect from a consumer for merchandise?—A. That is right.

Q. Now you say that you told other retailers what they should collect from consumers?—A. Yes, sir.

Q. Did you ever get any communication from Soft-Lite Lens Company?—A. No, sir; I did not, because I got all of my instruc-
tions in reference to Soft-Lite lenses from Mr. Mitchell, and
509 a representative would come down and we would go and call on these people and my story to them was, if I am permitted to answer, the price to the consumer is $9.

Q. You told retailers what you were getting from the consumer over at Riggs Optical Company?—A. No. I told retailers what I was instructed to tell them they must get.

Q. And you were instructed by Mr. Mitchell?—A. That is it. Not Soft-Lite.

Q. Mr. Singer suggests a question to me: when you were doing dispensing with Riggs Optical Company you were doing it for the doctors' accounts; the oculists' accounts?—A. That is right.

Q. In other words you would collect the money from the consumer?—A. That is right.

Q. And the doctor would be charged the retailer's price?—A. No.

Q. And the difference would be transmitted to the doctor?—A. Our basis that we operated in Houston on was if we sold a pair of Soft-Lite lenses for $9 we would charge the doctor exactly 50 percent.

Q. And you were collecting from the consumer as agent for the physician?—A. Well, it was not termed that in those days. Here, recently, since there has been some sort of a—the last two years they have cards out that are marked "Acting as Agent for
510 the Doctor." Previous to that they were not that way; just said "Riggs Optical Company."

Q. You take your instructions from the doctor how much to collect from his patient, don't you?—A. No, sir; I do not. We take our instructions from Mr. Mitchell how much we would get for those lenses from the dispensing counter in the Riggs office.

Q. And when a physician said he wanted his patient to pay $6 or $7 for lenses, didn't you follow his instructions?—A. When the doctor sent a patient over there and wanted him to have a cheap pair of white lenses we would give it to him, but we called that a "clinical case" and they did not expect to get any rebate back. They did not care, just so the patient got a cheap pair of glasses.

Q. The doctor did not tell you what charge to make to the consumer?—A. No, sir.

Q. You got all your instructions from Mr. Mitchell?—A. Yes, sir. I have not had a doctor tell me what to charge for any pair of Soft-Lites at any time.

Q. I am not talking about Gulf Optical. I am talking about Riggs.—A. I am talking about Riggs, too, sir.

Mr. LEHRICH: That is all.

By MR. SEYMOUR:

511 Q. Referring to the conversation you had in Chicago to which you testified you were talking to Mr. Withington about, you were talking to Mr. Withington about getting a license from Bausch & Lomb, were you not?—A. Yes, sir.

Q. When you started the Gulf Optical business did you start it by taking over the Riggs customers in your territory?—A. That is a question that can be answered two ways.

Q. Which way would you answer it?—A. I took customers from all of the wholesale houses, as any independent company does when they open.

Q. You did take a number of Riggs' customers?—A. Yes, sir.

Q. When did you first get in touch with the Department of Justice?—A. I never got in touch with the Department of Justice. They walked in down there and saw me and asked a few questions, and all of a sudden I got a subpoena to come up here.

Q. When did you first discuss this case with a representative of the Department of Justice?—A. An agent may, I take it, have anything. I did not talk about this case to anybody. Mr. Bursler came in, an FBI man, and asked a few questions, and asked if he could see some information on letters of Soft-Lite and Bausch & Lomb and Panoptik, and I say you have to show it because he is a Federal man, and I let him have my files.

512 Q. When was that?—A. About three months ago.

Q. That was the first time, and only time when you had a talk with any member of the Department of Justice?—A. Yes, sir.

Mr. ISSEKS. You talked to my associate today when you came in?

The WITNESS. Yes, sir. I am assuming today is not considered in the past tense.

Mr. ISSEKS. I am sorry to interrupt, but I do not want any confusion.

Q. Just to clear up that question of what you were talking to Mr. Withington about, it was about getting on the Bausch & Lomb wholesale list?—A. Yes, sir.

Q. Didn't you testify you talked to him about using his influence with Mr. Singer?—A. I was talking to Mr. Mitchell to use his influence, because if I could sell my story to Mr. Withington and he could tell it to B. & L. I was all set.

The COURT. I am glad to have that cleared up in my mind. You did not talk to Mr. Withington about having him talk to Mr. Singer?

The WITNESS. I assume I asked Mr. Withington to do all he could to influence Mr. Singer in my favor, and Mr. Singer was already influenced in my favor but he was handicapped by certain things he could not help.

513 Mr. LEHRICH. I move to strike it out.

The COURT. I will grant that.

Q. But you were discussing with Mr. Withington about getting on Bausch & Lomb's wholesale list?—A. I assume they go hand in hand, because you fellows make all the Soft-Lite lenses, and you would have a lot to do about saying whether I would or would not get Soft-Lite.

Mr. SEYMOUR. I move to strike it out.

The COURT. Motion granted. Are there any further questions?
Mr. GLICKFELD. Yes.

Redirect examination by Mr. GLICKFELD:

Q. Did you testify, Mr. Smith, that on some occasion you went with Mr. Truex of the Soft-Lite Lens Company to visit certain of your retail customers?—A. Yes, sir.

Q. And did you also testify that during those visits you told the retailers the prices they had to charge in their sales of Soft-Lite lenses?—A. Yes, sir; and if I could—this is a funny thing—I do not know anything about court folks, but this a funny thing, you cannot answer the information you are supposed to give because somebody strikes it out.

Q. Will you tell us what happened?—A. Well, Dean and I would go into these fellows and some were not selling very many Soft-Lites and we would have instructions to kick them
514 up and push them up and get a lot more Soft-Lite sales out of them, and one of the arguments we used is, "Doctor, here is a lens sells for $9, and you sell it, too, and anybody else who sells it has to sell it for $9, and if anybody else don't sell it for $9 we kick them out, and you get behind it and push it," and that was the story for five or six years, and we got a lot of Soft-Lite sales by pushing it that way.

Q. And you told that story in the presence of Mr. Truex?—A. Yes, sir.

Q. Do you recall how often you told that story?—A. After six years it would be hard to tell that, but I think the record of our Houston branch on Soft-Lites was pretty good. We are down in a hot country where glare is pretty bad.

Q. Would you say that frequently you told that to retailers in the presence of Mr. Truex?—A. Yes, sir; frequently.

Q. In late 1938 or early 1939, when you spoke to Mr. Singer and requested a Soft-Lite distribution as a wholesaler, and then talked to Mr. Withington, did you ask Mr. Withington to use his influence upon Mr. Singer to get you a distribution of Soft-Lite lenses?

Mr. LEHRICH. I object to that as improper redirect, and, furthermore——
515 The COURT. It is repetitious. There is no doubt about that.

Mr. GLICKFELD. I thought the record was not clear on that.

The COURT. I think it is amply clear.

Mr. GLICKFELD. I would like to have these pieces of paper marked for identification.

Mr. ISSEKS. Those are the letters referred to by Mr. Lehrich, and we thought the record ought to be clear.

(Marked "Government's Exhibits 107, 108, 109, and 110" for identification.)

The COURT. Why don't you show them to your adversaries, and maybe they will consent to admitting them.

Mr. ISSEKS. May I make a suggestion: I would like to offer them. They have signatures on them, and it seems to me it might be easier——

The COURT. If there is no objection I will receive them.

Mr. SEYMOUR. I have not looked at them, because I thought they would be only marked for identification.

The COURT. I am trying to shorten it.

Mr. SEYMOUR. Except my general objection I have no specific objection to these letters.

516 The COURT. Mr. Lehrich has no objection?

Mr. LEHRICH. No obejection.

(Government's Exhibits 107, 108, 109, and 110 for identification marked in evidence.)

Mr. GLICKFELD. For the purpose of the record, Exhibit 107 is a letter dated June 19, 1941, signed "Ray"—R. G. Landis, to the witness.

Government's Exhibit 108 is a letter, dated July 18, 1941, written by the witness to the Soft-Lite Lens Company, attention Mr. Ray Landis.

Exhibit 109 is an original letter, dated July 21, 1941, written by R. G. Landis to the witness.

Exhibit 110 is a copy of a letter, dated September 5, 1941, written by the witness to the Soft-Lite Lens Company. Attention Mr. R. Landis.

No further questions.

The COURT. We will adjourn until 10:30 tomorrow morning.

(Adjourned to Friday, September 19, 1941, at 10:30 a. m.)

517 UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY ET AL

NEW YORK, *September 19, 1941.*

10:30 a. m.

Trial resumed.

Mr. ISSEKS. Your Honor, the Government recalls Mr. Ramel, to straighten out some of the difficulties we had yesterday. Before I proceed, I would like to tell your Honor that as far as the Government is concerned, it won't be necesary to sit tomorrow because we will dispose of all of the out of town witnesses this morning.

The COURT. Very well.

Mr. ISSEKS. Of course, if anybody else wants to make the application——

The COURT. It makes very little difference to me. I still have my motion calendar undisposed of.

JOSEPH F. RAMEL, recalled as a witness for the Government, testified further as follows:

Direct examination by Mr. ISSEKS:

Q. I show you a document which is dated November 10, 1933, on the stationery of Bausch & Lomb, signed Bausch & Lomb Optical Company, Ben Ramaker, which has been marked Government's Exhibit 111 for identification, and ask you whether
518 this is the document you referred to yesterday as the notice taking you off the Bausch & Lomb wholesalers' list?—A. Yes.

Mr. ISSEKS. I offer that in evidence.

Mr. SEYMOUR. In addition to the general objections applicable, I object to it upon the ground it is incompetent, irrelevant and immaterial, and no showing at all that there is any connection between this and the action in the following year by Soft-Lite, or whenever the action occurred.

The COURT. Of course it is charged in the complaint that the activities of Bausch & Lomb and Soft-Lite were motivated by a common purpose, preordained, and while I will not pass on whether or not the existence of such a plan has been established, I will take it subject to that connection, if it has not yet been established.

(Marked "Government's Exhibit 111" in evidence.)

Q. Now, Mr. Ramel, when you testified yesterday that you were taken off the Bausch & Lomb list some time in 1931 or 1932, you were mistaken, were you not?—A. Yes.

Q. You just forgot the dates.—A. It was the American letter I referred to in 1932, from Mr. Koch, instead of the Bausch & Lomb letter. I was confused.

Q. Now this establishes the date definitely in your mind?—A. Yes, sir.

The COURT. What was the date?

519 Mr. ISSEKS. November 10, 1933, your Honor.

Q. Was it subsequent to this you had your visits from first Mr. Summers, and then Mr. Landis and then Mr. Singer?—A. Immediately thereafter.

Q. And yesterday you said it was about ninety days after you were taken off the Bausch & Lomb list and the date you were taken off the Soft-Lite Lens list?—A. Yes, sir.

Q. I show you a document marked "Government's Exhibit 112" for identification, dated February 13, 1934, addressed to Barnett & Ramel, signed Soft-Lite Lens Company, G. B. Hanaford, and

ask you whether that is the original letter taking you off the wholesalers' list from Soft-Lite Lens Company?—A. Yes, that is the letter.

Mr. ISSEKS. I offer it in evidence.

The COURT. From defendant Soft-Lite?

Mr. ISSEKS. Yes, sir.

The COURT. Is there any objection?

Mr. LEHRICH. No objection.

(Government's Exhibit 112 for identification received in evidence.)

Mr. ISSEKS. Now I would like to call your Honor's attention in this case to a specific reference to the fact that is a wholesale licensee, and that is the actual notice of cancellation.

520 The COURT. Very well.

Mr. ISSEKS. And I wish to also call your Honor's attention to the fact that when I agreed previously that Government's Exhibit 24, which I have here, inadvertently referred to a retail licensee rather than wholesale licensee, I of course did not have the other document and I was mistaken, and I now withdraw my previous stipulation and I am going to try to have the witness explain why he had two pieces of paper.

The COURT. Is there any dispute?

Mr. LEHRICH. He got two pieces of paper, but he was a wholesale licensee.

The COURT. We cannot agree, apparently, so go ahead.

Q. Before you became a wholesale licensee, your company did have a retail license?—A. Yes.

Q. And after you were taken off the wholesale list as shown by Government's Exhibit 112, was an effort was made by your company to get lenses from the Soft-Lite Lens Company?—A. Yes, from the Riggs Optical Company.

Q. And then you received, and I have the original——

The COURT. You mean you tried to get Soft-Lite Lenses from the Riggs Optical Company?

The WITNESS. Yes; on our retail license.

Q. Then you received Government's Exhibit 24, which I
521 show you the original of——.

Mr. ISSEKS. And which, if your Honor please, if I may be permitted, I would like to substitute for the copy.

The COURT. If there is any dispute about it you had better put it in and we will have both in evidence.

Mr. ISSEKS. I will have it marked Government's Exhibit 24–A.

The COURT. Very well.

Mr. ISSEKS. I offer the original letter which went to the witness to be marked as Government's Exhibit 24–A.

(Marked "Government's Exhibit 24–A.")

Q. Yesterday you were shown Defendants' Exhibit B, which is marked Chalnex Lenses, Price List, December 1933, Barnett & Ramel Optical Company. I show you that and then I ask you whether in 1933 and prior thereto your company put out two different kinds or quality of lenses and optical goods?—A. Yes.

Q. You tell us what they were?—A. Well, we had a standard quality, a first quality only listed up until the end of this time when we printed this Chalnex list for second quality lenses only to meet competition of American Optical Company's Nomarex.

522 Mr. LEHRICH. If your Honor please, I ask that that last part be stricken out.

The COURT. Motion granted.

Q. Did you have a second quality brand?—A. When we printed this?

Q. Yes.—A. Yes.

Q. What was it called?—A. Chalnex.

Q. And did you adopt that name in order to meet a competitive name?—A. Yes.

Mr. LEHRICH. I object to the question.

The COURT. I sustain your objection.

Q. Was there a line put out by another company which had another name in connection with second quality goods?—A. Yes.

Q. What was the name of that line?—A. Nomarex.

Mr. LEHRICH. I object to that as having nothing to do with the issues in this case.

The COURT. I will let him tell what the market conditions were generally.

Mr. ISSEKS. The purpose is the name.

The COURT. What difference does it make whether he did it to meet competition because he thought he could sell more and create a market or if he could make more money.

523 Mr. ISSEKS. I want to show the adoption of a name, a similar name; Nomarex and Chalnex.

Q. What was the name?—A. Chalnex.

Q. What was the name of the competitive line?—A. Nomarex.

Q. Did you at the time you put out this list, December 1933, have a first quality list out to your retailers?—A. Yes.

Q. And have you made an effort since the adjournment yesterday to have that list sent by your office to me?—A. Yes.

Q. And it is on the way here as far as you know?—A. Yes.

Mr. ISSEKS. Now, your Honor, as soon as we get that list I intend to offer it in evidence, and I have no further questions.

The COURT. The testimony as it stands at this moment is that the document, Exhibit B, December 1933, represents only a por-

tion of this line of goods, and that he had another price list or another schedule which was a first quality lens.

Mr. Isseks. That is right.

Q. Did you sell Soft-Lite lenses in second quality while you were a Soft-Lite wholesaler?—A. No, sir.

Q. Did you sell other tinted lenses in second quality at the time you were a Soft-Lite wholesaler?—A. Yes.

Q. And they are listed on this document which someone has marked up with a pointer as Velvet-Lite, Rose-Lite,
524 Cruxite, Mellowtone Red, and Soft-Ray?—A. Yes, sir.

The Court. Mr. Isseks, is it your contention that Soft-Lite was advertised on this first quality list?

Mr. Isseks. Yes, sir. The only thing is, we have not got it here and if I ask a question as to that it might meet with objection.

The Court. I don't know whether that would be objectionable.

Mr. Isseks. I will ask the question.

By Mr. Isseks:

Q. While you were a Soft-Lite wholesaler on your first quality list——

The Court. December 1933.

Mr. Isseks. December 1933.

Q. (Continuing.) Did you show Soft-Lite lenses?—A. Yes, sir.

Q. And that will appear on the document when it comes here? A. Yes.

Mr. Isseks. No further questions, your Honor.

525 Cross-examination by Mr. Lehmich:

Q. Mr. Ramel, originally when you were solicited as a stock retailer you signed an application to become such stock retailer, and ordered a qualifying quantity of lenses; is that correct?—A. No, sir; I never did. I was not in charge of the business at the time we became that licensee.

Q. I mean your company.—A. Our company. No; not to my knowledge.

Q. You first had a classification as a retailer, a retail stock buyer; is that correct?—A. Yes; we did.

Q. And then in January 1931 your company became what was known as a Class A wholesaler?—A. Yes.

Q. You put in a qualifying stock of a large quantity, and then bought as a Class A wholesaler; that is correct, isn't it?—A. That is right.

Q. Thereafter you continued to operate as a Class A wholesaler, buying on the terms indicated in the price list which Soft-

Lite Lens Company distributed, showing the prices at which a Class A wholesaler would buy; that is correct, isn't it?—A. Yes.

Q. And from the time you became a Class A wholesaler you never made any purchases as a retail stock purchaser, did you?—A. We did from the Riggs Optical Company.

526 Q. During the period that you had a Class A license, a Class A wholesale classification, all your purchases were made according to the Class A price list; isn't that so?—A. Do you mean from Soft-Lite or from Riggs?

Q. From Soft-Lite or from Riggs.—A. They gave us the Class A prices both places, from Riggs and also Soft-Lite.

Q. That is what I mean.—A. Yes.

Q. When the Soft-Lite Lens Company sent you a notice saying that your relationship with the company as a Class A wholesaler was discontinued——

Mr. ISSEKS. I object, your Honor. The document says right on its face "Wholesale Licensee."

Mr. LEHRICH. The record shows——

Mr. ISSEKS. No, I insist that the witness be interrogated with regard to what the document says. It is our position that they called them a wholesale licensee.

Mr. LEHRICH. I do not dispute that the words were used, but your Honor is not determining this case by the name that we call them.

The COURT. I am not passing on whether there is a difference, but let us not confuse the witness by giving him a phrase that he does not understand or know, or that is not contained in the document.

Mr. LEHRICH. That was not my intention, your Honor.

The COURT. I do not think it was.

Mr. ISSEKS. I do not think so, either, your Honor.

527 Q. When you received the notice Government's Exhibit 112, telling you that the business relations with your firm on the basis of wholesale licensee was being discontinued, you then sought to buy from the Riggs Optical Company as a retail licensee?—A. Yes.

Q. And Riggs—did Riggs sell you?—A. No.

Q. Then you also got a notice from Soft-Lite telling you that your retail license was cancelled?—A. Yes, sir.

Q. And you received this letter Exhibit 111 on November 10, 1933, from Bausch & Lomb; that is correct, isn't it?—A. Yes.

Q. Did you buy any merchandise from Soft-Lite Lens Company after November 1933, as a wholesaler?—A. I think so.

Q. As a matter of fact you purchased merchandise from Soft-Lite Lens Company right through February 1934; is that correct?

Mr. ISSEKS. I will stipulate it, your Honor.

Mr. LEHRICH. I do not want a stipulation at this time.

A. As near as I can remember, I think we got Thin-Lites or some of their other products from the Soft-Lite Lens Company. They were so closely related we did not know one from the other.

Q. Did you buy Soft-Lites, and were all of your orders filled?—A. No.

Q. From the Soft-Lite Lens Company?—A. No.

528 Q. From February, right down to 1934?—A. No; unless it be some of our branch offices, that were not aware of the fact we were cut off.

Q. Mr. Ramel, a transcript of your account which I have here indicates that in the month of November 1933, you purchased more merchandise from Soft-Lite Lens Company than you purchased in any other month during 1933. See if this list refreshes your recollection.

Mr. ISSEKS. I will stipulate it. Let him offer the document in evidence, and I will take it as the record.

Q. In December 1933, shipment was made to you in the sum of 81.39, and in January 1934, in the sum of 27.87, and in February 1934, in the sum of 66.93.

Mr. ISSEKS. I would like to show on the record that it is dollars and cents, and not thousands.

The COURT. Yes; 93 cents. Let the record show that.

Mr. LEHRICH. I will now offer in evidence a transcript of the witness's account. The books are here.

Mr. ISSEKS. No; I will take your word for it—unless I find out later that you were inadverently mistaken.

The COURT. It will be received.

Mr. ISSEKS. No objection by the Government.

(Marked "Defendant's Exhibit C.")

529 Mr. ISSEKS. Will counsel stipulate that there were no sales to this company after the date shown in February 1934, and after February 13, 1934?

Mr. LEHRICH. I will stipulate that there were no sales.

Mr. SEYMOUR. My objection, if your Honor pleases, that I have reserved here, applies to——

The COURT. It applies to the whole line of testimony.

Mr. SEYMOUR. To exhibits offered by the codefendant as well as by the Government?

The COURT. This is one case where your objection will not be deemed to extend to the other defendant.

Mr. LEHRICH. I will stipulate that our ledgers show no charges after February 1934. I cannot give you the exact date, because this is a monthly abstract.

The COURT. Is that both figures?

Mr. LEHRICH. That is a total, your Honor.

Mr. ISSEKS. It is a total, your Honor. We just added the two together.

Mr. LEHRICH. It is a total of the first two. I want to direct your Honor's attention to the total purchases. In 1931, $2,465.39; in 1932, $864.01; in 1933, $1,320.02.

The COURT. Is it true, Mr. Lehrich, that in 1931 there was
530 included the original acquisition of qualifying stock?

Mr. LEHRICH. That is right.

Q. Mr. Ramel, I understood you to say that in December 1933, you published what you called a second quality price list, this Chalnex price list?—A. Yes.

Q. That is the first time you published one?—A. I do not think it was. As near as I can remember I think we had one previous to that.

Q. In your second quality price list you included a pink-tinted lens called Soft-Ray?—A. Yes.

Mr. LEHRICH. That is all.

Mr. ISSEKS. We have no further questions, your Honor.

Mr. SEYMOUR. I would like to ask him a few questions.

By Mr. SEYMOUR.

Q. Mr. Ramel, prior to November 10, 1933, had you been on the Bausch & Lomb wholesale list for some time?—A. Prior to which date?

Q. November 10, 1933.—A. Yes.

Q. And during the four or five years prior to that date what had your high point of purchases been, in Bausch & Lomb products?—A. I don't recall.

Q. Were they between seven and eight thousand dollars in any one year?—A. I do not recall.

531 Mr. ISSEKS. If counsel has the figures I will stipulate it.

Q. Do those figures refresh your recollection?—A. I beg your pardon?

Q. Do those figures, between seven and eight thousand dollars, refresh your recollection?—A. No; they mislead me, I think.

Q. They do?—A. Yes.

Mr. ISSEKS. I will stipulate any of these figures that counsel says his records show, subject to my check through Mr. Ramel's accounts.

The COURT. That is a fair offer.

Mr. ISSEKS. If they have the records here, or a copy of the records.

Mr. SEYMOUR. Subject to correction by either side, I understand that the high point——

The COURT. Over what period?

Mr. SEYMOUR. The high point was I think 1930, but about that time the high point was somewhere around $7,600.

The COURT. That you mean was the maximum of sales by Bausch & Lomb to this witness's company over the period of their business relations?

Mr. SEYMOUR. In one year.

The COURT. In any one year?

532 Mr. SEYMOUR. Yes.

Mr. ISSEKS. I take counsel's statement as a statement of the facts, subject to correction by him. And, Mr. Ramel, I will ask you to be kind enough to check with your books and to send me a letter which I will offer as a correction. If there is still a further dispute we will probably get together.

Q. Mr. Ramel, do you remember what your purchases of Bausch & Lomb products were in 1933?—A. No, sir.

Mr. ISSEKS. I will take that, too.

Q. If I give you a figure under $900, would that refresh your recollection?—A. No, sir.

The COURT. Mr. Seymour, suppose you get that figure and they will take it subject to the same arrangement. I assume that that is agreeable to all counsel.

Mr. ISSEKS. I would like to make another suggestion. I would like to have Mr. Seymour get up a tabulation, as Mr. Lehrich has, month by month and year by year, and let us offer that as an exhibit, rather than taking a statement which because it goes through so many people may be in error. You may lose a number in there.

Mr. SEYMOUR. Mr. Isseks has ample opportunity to check it through Mr. Ramel, and I will make any correction necessary.

I am not concerned about the period, but I am concerned
533 about two points. First that the high point was the figure I stated, and second that in 1933, prior to the removal from the wholesalers' list, the total had fallen down to under $900.

The COURT. Mr. Isseks, you have access to the figures.

Mr. ISSEKS. I can supoena them from Bausch & Lomb.

The COURT. If you think that the other figures are relevant you can have them produced.

Mr. ISSEKS. I will ask Mr. Ramel to produce the other figures, and when we get them we will offer them.

Mr. SEYMOUR. We will not have any dispute about them, if they are relevant. I am only concerned with these two points.

The COURT. But if he thinks that they are important to his case he need not expect you to produce them for him. And you can produce them for your case.

Mr. SEYMOUR. That is right; and we won't have any dispute if they are relevant.

Mr. ISSEKS. I call upon counsel for Bausch & Lomb to produce the figures for each year, and to each one of its offices. The total figures.

The COURT. You mean aggregate figures?

Mr. ISSEKS. Yes.

534 The COURT. You do not need it broken down by offices?

Mr. ISSEKS. No.

Mr. SEYMOUR. I will state, subject to correction, that the purchases prior to November 10, 1933, were under $900.

The COURT. He wants the 1931 and 1932 figures. Or whenever it was their business commenced. When did they commence?

Mr. ISSEKS. Mr. Ramel, when did you start doing business with Bausch & Lomb as a wholesaler, approximately?

The WITNESS. As near as I recall I believe some time in 1926 or 1927.

Mr. ISSEKS. You have all your books, have you not?

The WITNESS. I doubt it very much. We have moved several times, and a lot of stuff in the moving was destroyed, the old stuff.

Mr. ISSEKS. I call on the defendant Bausch & Lomb, your Honor, to produce those figures.

Mr. SEYMOUR. We will look through those at the recess and will have the figures available and in court.

The COURT. You do not need the witness any more?

Mr. ISSEKS. No, sir.

Mr. LEHRICH. I have some questions, your Honor.

535 By Mr. LEHRICH:

Q. Mr. Ramel, you testified that you published this price list of December 1933, and listed Soft-Ray. The publication of that list was before you were taken off the Soft-Lite list; that is correct, isn't it?—A. I may have said that, but I was confused perhaps, and I do not know now exactly what you have asked me. Will you please clarify it.

Q. Today you said that you published the price list in December 1933, in which you included Soft-Ray as a pink-tinted lens; that is correct, isn't it?—A. That second quality price list there?

Q. This Exhibit B.—A. Yes, we published that.

Q. And December 1933, was before you were taken off the list?—A. That is officially; but when Bausch & Lomb took us off we knew we were off the Soft-Lite list, too.

Mr. SEYMOUR. I move to strike out the answer as incompetent, irrelevant, and immaterial.

The COURT. Granted.

Mr. ISSEKS. Your Honor, I submit that his answer answered the question, and that as an answer at the request of one of the defendants it seems to me it is responsive.

The COURT. I do not think it was responsive. The question was whether or not a certain thing happened before a certain
536 other date. There was not any request for a reason why, or any other suggestion of a reason.

Q. You were asked this question and you made this answer yesterday when I was examining you:

"Q. Well, you mean after Soft-Lite discontinued its business you took on additional lines?—A. Yes; we did not have Soft-Lite, and we adopted that name you saw printed, Soft-Ray, and that is what refreshed my memory, because we would not sell Soft-Ray while we were on Nat Singer's list selling Soft-Lite."

That was the question and answer; do you recall that?—A. I was trying to justify my answer, and I still say I was correct, because when Bausch & Lomb took us off, that meant the same thing as Soft-Lite taking us off, and everybody knew it.

Mr. SEYMOUR. I move to strike out the answer as incompetent, irrelevant, and immaterial.

The COURT. No; I will overrule it at this time. I think counsel is prodding into that position. I will overrule it.

Mr. SEYMOUR. I do not think he ought to prod him into that position or ought to be allowed to prod into the position so the witness throws in what he obviously has determined he wants to throw in when he gets a chance.

The COURT. But he is being pushed in the direction, and
537 counsel is cross-examining him. I will let the answer stand.

Q. Mr. Ramel, the records show you received written notice from Bausch & Lomb in November 1933. You received no written notice from Soft-Lite Lens Company until February 1934. In between that period you were selling Soft-Ray lenses and you published a price list, or a second quality lens price list, in which you included Soft-Ray lenses, and they referred to pink-tinted lenses?—A. Yes.

The COURT. The answer is yes or no.

The WITNESS. Yes.

538 RUBEN M. OSTERTAG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. GLICKFELD:

Q. Where do you reside, Mr. Ostertag?—A. St. Louis.

Q. And are you in business there?—A. Yes, sir.

Q. And the name of the business, sir?—A. Optical Service Company.

Q. And do you own that business?—A. Not entirely. I am the president of that company.

Q. Is it a corporation?—A. It is a corporation.

Q. Do you own any of the stock?—A. Yes.

Q. A substantial part of the stock?—A. Yes, sir.

Q. And what is the business of that company?—A. It is a wholesale business and dispensing business.

Q. And how long has that company been in existence?—A. For ten years.

Q. And you have been connected with that company during that whole ten years?—A. Yes, sir.

Q. What was your business prior thereto?—A. I was employed by Riggs Optical Company.

Q. For how long?—A. From 1914 to 1930; September 1930.

Q. In what capacity, sir?—A. Stock boy, salesman, and branch manager.

539 Q. And where were you branch manager for Riggs?—A. In Madison, Wisconsin, Green Bay, Wisconsin, and St. Louis.

Q. And during what period were you branch manager?—A. From about 1923 or 1924 to 1930—the end of 1930.

Q. And while you were branch manager did the Riggs Optical Company sell Soft-Lite lenses?—A. Yes.

Q. And did you ever attend a sales meeting of the Riggs Optical Company at which time Nat Singer addressed that meeting concerning Soft-Lite?—A. Yes.

Q. And do you recall where and when that took place?—A. The first meeting that I attended was in Omaha.

Q. And do you remember the date, sir?—A. That was one of the early meetings. I don't remember what year that was.

Q. Do you recall how long after you had become a branch manager that meeting took place?—A. Well, it was one of the first years that I was in the capacity as manager of the office.

Q. And that would make it about 1924, wouldn't it?—A. I think so. I could not be correct about those dates.

Q. But that is your best recollection?—A. Yes, sir.

Q. And can you recall what Mr. Singer said at that meeting concerning Soft-Lite?—A. Not at that meeting.

Mr. SEYMOUR. May I have an objection to this——

540 THE COURT. It is unimportant. He says he cannot remember what was said. The ground has been laid, but nothing is going to be built on it.

Q. Do you recall Mr. Singer addressing any other meeting of the Riggs Optical Company?—A. Yes; several meetings in Chicago.

Q. And do you recall the approximate date of those meetings?—A. Well, there were meetings in 1929 and 1928. I recall those two meetings.

Q. And Mr. Singer addressed those meetings, did he not?—A. Yes; he did.

Q. Do you recall what he said at those meetings?

Mr. SEYMOUR. I object to this line. I must say, if your Honor please, that the whole subject seems to me to be immaterial and irrelevant to any issue in this case. Of course Mr. Singer made efforts to sell his products.

The COURT. How do you know what he is going to say? He has asked what he said, and I assume he is going to try to get some admissions out of him. Otherwise it will be irrelevant and immaterial, but the question is relevant and I will overrule your objection.

Mr. SEYMOUR. Exception.

A. Well, these meetings were usually——

The COURT. No; just answer the question. I do not want
541 to cut you off, but the question is, what did Mr. Singer say?

The WITNESS. Oh, he outlined the sales policy for the new year.

The COURT. Just tell us what he said. "He told us as follows, in substance."

The WITNESS. Well, I cannot.

Q. Did he say anything about the prices which the wholesalers were to charge the retailers?—A. Yes.

Q. And what did he say in substance concerning that subject matter?

Mr. SEYMOUR. May I have an objection to this line, if you Honor please, because this is along the line of my earlier continuing objection.

The COURT. Yes.

A. Well, he outlined the sales policy for the new year. He naturally must have said something about prices.

Q. Do you recall what he said about prices, sir?—A. We had our price lists, and of course we were told at these meetings what the price should be.

Q. From whom to whom?—A. Well, from Mr. Singer and Mr. Wahlgren.

The COURT. No; he means the price from whom to whom; the manufacturer to the wholesaler; wholesaler to the retailer, the retailer to the consumer; which price range did he talk
542 about and what did he say about it.

The WITNESS. Well, from the wholesaler to the retailer and from the retailer to the consumer.

The COURT. Now what did he say about those specific subjects?

The WITNESS. He may not have said anything about the price from the wholesaler to the retailer. That price list was printed.

The COURT. Well, what did he say?

The WITNESS. He did say that there was a three-dollar extra above the price of white glass for Soft-Lite to the consumer in single vision, and four dollars above the price for Soft-Lite bifocals.

Q. And did he say that the $3 and $4 over white ——

Mr. LEHRICH. If your Honor please, I think at this point counsel should not lead.

The COURT. I agree with you. Go ahead, Mr. Witness, and try to recall the details of what he spoke about.

The WITNESS. Well, we were told by Mr. Wahlgren ——

The COURT. You are still speaking about Mr. Singer.

The WITNESS. And Mr. Singer at these meetings, that the
543 retail price of Soft-Lite was a fixed price that should be maintained by all retail dealers.

Q. And did you ever advise your retail customers to maintain these resale prices?

Mr. SEYMOUR. I object to the form of the question, if you Honor please. We are entitled, if he is going to pursue that line, to have a question asked which does not include a legal conclusion, and also have the time and place fixed.

The COURT. Yes. I will let you reframe the question and get it a little more specific.

Q. During the period you were branch manager, which I understand was from 1923 or 1924, to 1930 ——

The COURT. Ask what those instructions were.

Q. What were your instructions concerning advising retailers as to the price they were to charge consumers?

Mr. SEYMOUR. We are entitled to know from whom?

Q. Yes. What were your instructions from Mr. Wahlgren?—A. We were instructed to tell the retailer that the extra or $3 above white glass should be charged to the consumer and if he did not maintain those prices he could not have Soft-Lite glass, Soft-Lite lenses.

Q. And did you carry out those instructions?—A. I did.

By the COURT:

544 Q. Did you visit the retail trade as part of your duties as branch manager?—A. Yes.

Q. You visited the various opticians and optometrists in retail stores where they sell glasses?—A. Yes.

Q. And you told them that they had to do this?—A. Yes.

Q. And did any of them ever object?—A. No.

Q. As far as you know, they all complied with your instructions?—A. That is right.

Mr. GLICKFELD. No further questions.

Cross-examination by Mr. LEHRICH:

Q. Mr. Ostertag, you were told by Mr. Wahlgren to tell the retailers to charge $3 above white. The retailer fixed his own white price, did he not?—A. Well, no.

Q. Didn't the price on white lenses vary among the various retailers?—A. Not in my territory.

Q. In your territory the retailers all charged about the same price for white lenses?—A. Yes.

Q. And you told those retailers that when they sold Soft-Lite lenses they should ask for $3 above white?—A. That is right.

Q. And that was a prevailing charge, was it not, with respect to all tints; so much above white, is that correct?

The COURT. You mean the exact three-dollars amount, Mr. Lehrich?

Mr. LEHRICH. Yes.

545 A. No.

Q. Mr. Ostertag, your company was sued by the Soft-Lite Lens Company, was it not?—A. Yes, sir.

Q. For palming off.

Mr. ISSEKS. I object, your Honor.

The COURT. You object to the characterization?

Mr. ISSEKS. Yes.

The COURT. Ask him whether he was sued in a certain action so entitled, and produce your complaint if that is what you want.

Q. Were you sued by the Soft-Lite Lens Company for selling on oculist's prescription, lenses other than Soft-Lite, where the prescription called for Soft-Lite?—A. Yes.

Mr. LEHRICH. That is all. Now I will offer in evidence the opinion of the Court.

The COURT. You do not have to put that in evidence.

Mr. LEHRICH. I mean I will direct your Honor's attention to it.

The COURT. Brief it to me. I take it that the Court can take judicial notice of decisions of other courts.

Redirect examination by Mr. GLICKFELD:

Q. What was the District Court's decision in that case

546 just referred to by Mr. Lehrich?

Mr. LEHRICH. I object. It is a written decision and I am going to furnish your Honor with a copy and I don't think he ought to ask this witness about it.

The COURT. You asked if he were sued, and I suppose he has a right to say what happened to the suit.

Q. Did your company win that case?—A. Yes.

Q. And was the case appealed by the Soft-Lite Lens Company?—A. Yes, sir.

Q. And was the case affirmed in the court on appeal?—A. Yes.

Re-cross-examination by Mr. LEHRICH:

Q. Was there a finding in the opinion that you did palm off but the instances were not sufficient to justify a decree?

Mr. GLICKFELD. Objection.

The COURT. We are now going into minute detail. I assume you are going to submit the opinion in which it appears.

Mr. LEHRICH. Yes, that was my suggestion, but Mr. Glickfeld asked his questions as to appeal——

The COURT. I can see that he wanted the record to indicate that the appeal was taken and the lower court affirmed. The record of the appeals would not be in the opinion.

547 Mr. LEHRICH. I simply wanted to indicate that in the opinion the findings specifically indicate that this man did palm off.

The COURT. All right. You call it to my attention and that is as good as the witness saying it to me. I will read the opinion when it is brought to my attention.

Mr. ISSEKS. Of course I assume that unless there is a stipulation, all statements of counsel on both sides are not evidence.

The COURT. Yes; you need not call that to my attention. I know some of these things.

Mr. ISSEKS. I am sorry, your Honor.

The COURT. Are there any further questions?

Mr. SEYMOUR. No questions.

EDWARD W. ARNOLD, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. GLICKFELD:

Q. Where do you reside, Mr. Arnold?—A. Chicago.

Q. And you are in business there?—A. Yes.

Q. With what company are you connected?—A. The Arnold Optical Company.

Q. And what is the nature of the business of the Arnold
548 Optical Company?—A. Wholesale.

Q. Wholesale what, sir?—A. Wholesale prescription house.

Q. Wholesale optical goods?—A. That is right.

Q. And how long has your company been in existence?—A. Since June 1935.

Q. And you have been connected with it since that time?—A. Yes.

Q. Were you at any time employed by Riggs Optical Company?—A. I was.

Q. And when were you first employed by Riggs Optical Company?—A. February 1st, 1917.

Q. And where was that employment?—A. Omaha.

Q. And what was the nature of your duties at that time?—A. I started in the shop; shop work.

Q. And did you continue in the shop work for some time?—A. For some time, and then I did pricing, and then some City sales

work, and then I was sent over to Council Bluffs, and was manager of the Council Bluffs office.

Q. When were you made manager of the Council Bluffs office?—A. June 1st, 1923.

Q. And you are now referring to the office of the Riggs Optical Company in Council Bluffs?—A. That is right.

549 Q. And did you leave Council Bluffs?—A. I left Council Bluffs May—it was the Saturday night before Memorial Day.

Q. Of what year, sir?—A. 1924.

Q. And you were still engaged by the Riggs Optical Company?—A. I was. I was on my way to Quincy, Illinois, to take charge of the Quincy branch.

Q. And how long were you there, sir?—A. I was there until 1930—January 1930.

Q. Now, Council Bluffs is not very far from Omaha City, is it?—A. Just across the river. I imagine about five miles from downtown Omaha to downtown Council Bluffs.

Q. Do you recall when you first met Nat Singer?—A. I met Nat Singer either in the Fall or in the Spring. It was either in the Fall of 1923 or the Spring of 1924. I met him in the Omaha office just in the runway as I came in of an evening. I stopped there most evenings on my way home. Mr. Wahlgren introduced me to Mr. Singer.

Q. Do you recall the conversation which took place at that time?

Mr. SEYMOUR. I have an objection to this line as heretofore recorded?

The COURT. Your objection is noted.

Q. Do you recall the nature of the conversation, in substance, that took place at that time?—A. Well, he told about Soft-

550 Lite and said Mr. Singer would be over to Council Bluffs the next day and that I should take him around and introduce him to the doctors and we would talk Soft-Lite.

Q. By "he" in your last answer, you meant Mr. Wahlgren?—A. Mr. Wahlgren said that Mr. Singer would be over the next day.

Q. And did Mr. Singer come over to Council Bluffs the next day?—A. He did.

Q. And did you take him around to see certain people?—A. I took him to Dr. Dean, Dr. Thompson, and Dr. Sidney Maiden, and the Terry Optical Company.

Q. Do you recall what Mr. Singer said to the three doctors and to whoever he saw at the Optical Company?

Mr. LEHRICH. I object. I understood this question to be with respect to circumstances in 1923 long before this conspiracy is alleged to have taken place.

The COURT. When did this conversation take place?

The WITNESS. This was in 1923.

Mr. ISSEKS. The witness said the end of 1923 or the early part of 1924.

The COURT. Let us get the date because I assume your complaint has an originating date.

Mr. ISSEKS. That is right; 1924.

Mr. GLICKFELD. Even though the complaint would
551 state 1924, I think we would be able to show the background of the conspiracy and certain events which took place leading up to the formation of the alleged conspiracy, your Honor.

The COURT. Of course 1924 is part of your background, too, in your complaint.

Mr. LEHRICH. Yes; but this is certainly before the contract with Bausch & Lomb, and Mr. Singer's sales policy in 1923 could not result in the contract made in 1924 which is the background of this conspiracy.

The COURT. You fix the date, and if it is before the time specified in the complaint I will sustain an objection to it.

Mr. GLICKFELD. May I have this to say: I think there is testimony before concerning the distribution and the type and method of distribution of Soft-Lite lenses prior to the time that Bausch & Lomb agreed to make Soft-Lite glass for Soft-Lite Lens Company.

The COURT. You are offering proof now at this late stage of the general background and not getting into the conspiracy at all.

Mr. GLICKFELD. Yes; I think if this witness is permitted to testify his testimony will show the way and method that Soft-Lite lenses were distributed——

The COURT. Before?

552 Mr. GLICKFELD. Yes; in order to show——

The COURT. To differentiate it from the subsequent methods?

Mr. GLICKFELD. Correct.

The COURT. I will let it in for that purpose alone and if it does not show that at that time, I will entertain a motion to strike.

Mr. LEHRICH. I except.

Mr. SEYMOUR. I object as against my clients, if your Honor please, because it is incompetent, irrelevant and immaterial as far as my clients are concerned, what this gentleman heard Mr. Singer say to X.

The COURT. I will make the same disposition with respect to your objection.

Mr. SEYMOUR. Exception.

By Mr. GLICKFELD:

Q. I think the question before you, Mr. Arnold, is, do you recall what Mr. Singer said to the three doctors and the Terry Optical Company? Do you recall in substance what he told the three doctors and the Optical Company?—A. Well, he told them what a good lens it was, and how it would filter this out or filter that out, and what the purpose was, what it would do—a regular sales talk on any colored lens.

Q. And did he make any mention of the price——

553 Mr. LEHRICH. If your Honor please, I think when counsel asks——

The COURT. Sustained. I don't think you ought to lead the witness. He is your witness.

Mr. GLICKFELD. I am sorry, your Honor.

Q. Do you recall his saying anything else to those individuals at that time?—A. No; it was just the general sales talk of the kind of lens and what it would do and all.

Q. He made no mention of the method of distribution at that time?

Mr. LEHRICH. Now, if your Honor please, if the witness says that is all he talked about, I don't think he ought to get any suggestion from counsel.

The COURT. You are quite right. The whole thing is quite irrelevant and I will entertain a motion to strike it out; a motion to strike out everything testified to since the objection was taken.

Mr. LEHRICH. I make such a motion now.

The COURT. Motion granted.

Mr. ISSEKS. May I be heard?

The COURT. Yes; I don't see where we are getting on this. I do not understand that there has been a single allegation of the complaint that this witness is proving. I don't want to be

544 short with you. Don't misunderstand me. I am trying to get an expeditious trial of this case.

Mr. ISSEKS. I agree, your Honor, but we take the position that the distribution system which has been used since 1924 was part of an arrangement between Bausch & Lomb and Soft-Lite.

The COURT. Certainly, and I let it in to permit that evidence, but this witness has not testified to it.

Mr. ISSEKS. But there is no way of proving a negative except by asking the negative questions, and the testimony shows that Mr. Singer was going to these three doctors and the Terry Optical Company and did not talk about distribution system. We have asked the witness whether he talked about anything else. There is no way of proving it any other way. You cannot prove a negative except by the absence of positive proof.

The COURT. No; you can show at that time there was no such distributing system by putting on a retailer or optometrist or somebody who will tell you that, but all this man says is that on a particular occasion Mr. Singer did not speak on the subject.

Mr. ISSEKS. But he goes to four different people and that is prior to the time that Singer goes to Rochester, and he goes to
555 those four people in Council Bluffs and does not make any reference to a distributive system, and other evidence shows that they always talked about a distributive system thereafter.

The COURT. If there was some question that came up about it and Singer made some statement about it, I will let that in, but I am not going to permit myself to draw an inference that a certain thing did not exist because in a specified conversation a man did not mention the subject. I think that is too thin a basis on which I can permit myself to draw an inference, and I will grant the motion to strike out.

Mr. ISSEKS. I except, your Honor.

By Mr. GLICKFELD:

Q. Mr. Arnold, while you were at Council Bluffs did you sell any Soft-Lite lenses?—A. Yes.

Mr. LEHRICH. I assume this is 1923?

Mr. GLICKFELD. The witness has testified he was at Council Bluffs between June 1923 and May 1924.

The COURT. I will permit him to answer the question.

A. Yes.

The COURT. Don't let the argument of counsel disconcert you in the slightest. You proceed and answer the questions to the best of your ability.

Q. Did you receive any instructions from your superior
556 concerning your sales of Soft-Lite lenses to your customers during the period that you were at Council Bluffs?

Mr. SEYMOUR. I object to that as too general. I think the "superior" ought to be identified.

The COURT. I will let him answer the question and then let him ask the superior's name.

Mr. SEYMOUR. It is also objectionable because it precedes a date of this alleged conspiracy.

The COURT. I will overrule you on that.

Mr. SEYMOUR. Exception.

A. I did not understand that.

Q. Who was your superior while you were branch manager at Council Bluffs?—A. R. M. Wahlgren.

Q. Did Mr. Wahlgren ever tell you——

Mr. LEHRICH. I don't like to cut counsel short, but he is about to ask a question——

The COURT. You don't want him to lead. You are quite right.

Q. What instructions did Mr. Wahlgren give to you when you were in Council Bluffs concerning your sales of Soft-Lite lenses?—A. Well, I cannot say.

Q. To the best of your recollection.—A. I do not think at that time they were far enough along to say much, if anything, about it.

Mr. SEYMOUR. I move to strike out the answer
557 as incompetent and immaterial.

The COURT. Overruled.

Q. Did you determine the prices at which you were selling Soft-Lite lenses while you were at Council Bluffs?—A. No. There was a prescription book, the same as most of the houses have now, and the doctor pays a certain price for a certain kind of lens, but what he does with it there was not any price at that time.

Q. And where did you get that prescription book?—A. Well, Riggs put out a prescription book every year. Now I do not know whether that was in there or whether that was a separate price or what. I don't remember that.

Q. That is your best recollection?—A. Yes, sir.

Q. And did you sell Soft-Lite lenses to all the retailers and doctors in Council Bluffs?—A. All the customers I had.

Q. You did not refuse to sell the Soft-Lite lenses to any customer who requested their purchase?

Mr. SEYMOUR. I object to that as incompetent, irrelevant, and immaterial.

The COURT. Overruled.

Mr. LEHRICH. Your Honor, there is a concession in this case, and if it is not clear, I am willing to make a concession that
558 prior to 1933 there was no restriction with respect to any wholesalers as to selling to any retailer, and it was only after the announcement of May 17, 1933, that we declared it our policy that Soft-Lite lenses should be sold by wholesalers only to licensed retailers. This is the negative of that, and I make no dispute of it.

The COURT. I will take your concession but I will permit counsel to proceed with his proof to create whatever background of fabric he wants to weave, or atmosphere he wants to create, against which he wants to develop the charges in this complaint, but I think your concession should be taken to heart by counsel in order to not unnecessarily encumber the record.

Mr. ISSEKS. Your Honor, we take the position that the distributor system and refusal to sell took place in July 1924.

The COURT. I am aware of that and that is why I am not curtailing your proof.

Mr. ISSEKS. Thank you, sir.

The COURT. In other words, I said to you, and my statement means that after 1933 you ought to have some record on that. But you go ahead and prove your case to the hilt. You have no concession.

By Mr. GLICKFELD:

Q. Were all your customers of Soft-Lite lenses while
550 you were at Council Bluffs commonly known as maintainers of price?

Mr. LEHRICH. Oh, I object to that.

The COURT. Objection sustained.

Q. Do you know what prices your customers were charging for Soft-Lite lenses to their customers?

Mr. LEHRICH. I object to that. I don't think that is a background in this case.

The COURT. No; that is not the question. The question is whether he knew or kept track of the prices his customers were charging to their customers.

Mr. LEHRICH. In 1923, I do not see that it makes any difference.

The COURT. 1923 and 1924. He was at Council Bluffs for the first five months of 1924 as well. I will overrule your objection.

Q. (Question read.)—A. I did not know.

Q. Do you know whether or not they were charging the same prices on comparable lines?

Mr. LEHRICH. I object to that.

The COURT. Sustained. He has already answered the question that he does not know.

Mr. GLICKFELD. I thought perhaps the witness may have thought I meant the specific prices.

The COURT. How could he know whether they were
560 all the same if he did not know what they were.

Mr. LEHRICH. If your Honor please, I want to make this request: this is a witness called by the Government and is not a hostile witness, and this is not cross-examination, and I ask counsel be admonished not to suggest answers in the questions.

The COURT. I think he ought not to lead his witness and I will hold him strictly to that rule. He is your witness and you have had an opportunity to prepare him. He knows what you want to prove by him and although this is a complicated commercial question, nevertheless the rule about leading your own witness ought to be observed.

Mr. GLICKFELD. Yes, your Honor.

Q. Now, Mr. Arnold, do you recall attending a meeting of the Riggs salesmen during 1924?—A. Yes.

Q. And was that meeting addressed——

The COURT. Where was that meeting held?

Q. Where was that held?—A. Well, the first meeting I attended after I was branch manager——

The COURT. No; Mr. Witness. That is not the question. The question is, where was the 1924 meeting held?

The WITNESS. It was held in Omaha.

Mr. SEYMOUR. May we have the time fixed?

561 The COURT. 1924 he says. Do you mean the time of the year?

Mr. SEYMOUR. Yes.

The COURT. If the witness can do it, I will let him. Do you remember what month?

The WITNESS. No; my recollection is it was in the Fall.

The COURT. Go ahead, Mr. Glickfeld.

Q. And did Mr. Nat Singer address that meeting?—A. Well, I could not swear to that. He addressed so many meetings that I have been to.

Q. I just want your best recollection. Did he or did he not address that first meeting that you attended?—A. I would say yes.

Q. And do you recall in substance what he said in addressing the meeting?

Mr. SEYMOUR. May I have the same objection as respects my clients, if your Honor please?

The COURT. That is already on the record.

Mr. ISSEKS. I think there ought to be an indication that there is an objection continuing. I do not want to quarrel with counsel but I have a sort of a suspicion that the witness is getting confused by these objections.

562 The COURT. Of course counsel has a right to object, and he does not have to record a continuing objection. It is true that you have an objection on this whole line on the ground that there is no connection laid between Bausch & Lomb.

Mr. SEYMOUR. The only reason I am doing it is that as new witnesses are called, I want it understood.

The COURT. I cannot accept Mr. Isseks' objection anyway because you have a perfect right to object to each question if you so choose.

Q. (Question read.) A. No; no more than he talked about the selling of his lines and what it was and what it would do.

Q. And do you recall his saying anything else than what you have just testified to?—A. (No answer.)

Q. Were you ever informed that Bausch & Lomb——

Mr. LEHRICH. I hate to interrupt, but the question as he has started to ask it indicates it will contain a suggested answer that Bausch & Lomb would do certain things. I think the question

should be, What instructions did your get concerning Bausch & Lomb?

The COURT. Usually we permit counsel to finish his question, but I think the suggestion of counsel should be taken to heart. I am aware of the fact that these are not your witnesses in the same sense that they are your clients in a commercial action for
563 goods sold and delivered, and I will give you considerable leeway in directing his mind towards the subject you want him to testify to. I am not going to hold you to the same rule about not leading as I would if this was an action for services rendered on behalf of your client, but I think you ought to have some regard for that rule. I think the defendants are entitled not to have you suggest the answers by the form of your questions

Mr. GLICKFELD. Yes, your Honor.

Q. Mr. Arnold, when you were at Council Bluffs did you know who was making the Soft-Lite glass?—A. Well, I was either told by Mr. Singer or Mr. Wahlgren that it was French glass, but I did not know who made it at that time.

Q. Were you ever informed thereafter that anyone else made their glass?

Mr. SEYMOUR. I don't see what information to him on that subject could possibly be relevant to.

The COURT. Neither do I, but he is having trouble getting his witness around to his proposed line of inquiry and I will let him go along. It is immaterial.

Q. (Question read.)—A. No; but Mr. Wahlgren told me one time of a visit to the office, or when he was over and I saw him, that he thought that in the near future Soft-Lite lenses would be made by Bausch & Lomb.

564 Q. And was it ever brought to your attention that Bausch & Lomb was making the Soft-Lite lenses?—A. Oh, yes.

Mr. LEHRICH. I object.

The COURT. That is not in dispute.

Mr. LEHRICH. It is not in dispute, but I see no point in it unless——

The COURT. I don't think the Government disputes that in 1924 they made the lenses. I think we are wasting more time in making objections and ruling on them. There is no doubt about the fact that some time in 1924 Bausch & Lomb undertook the manufacture of this glass. It is well established in this case.

Q. Mr. Arnold, did you ever receive any instruction from Mr. Wahlgren concerning your resale of Soft-Lite lenses, after they were being made by Bausch & Lomb?—A. Well, I know that after I went to Quincy——

Mr. SEYMOUR. I think that calls for a yes or no answer.

The COURT. Yes. Did you or not get instructions?

The WITNESS. Yes; I did.

Q. What were those instructions and when did you receive them?

The COURT. First answer the second question, when did you receive those new instructions?

565 The WITNESS. Well, it was the first year I was there, about the last part of 1924, or shortly after that.

Q. That is after you went to Quincy?—A. That is right.

Q. And what was the substance of those instructions?—A. Well, that certain people would be sold the Soft-Lite and they had to keep up the price and they had to maintain a certain figure or we did not sell.

By the COURT:

Q. That is a little vague, when you say he had to maintain a certain figure: It may be understood in your industry but it is a little vague to me.—A. Most generally the white price would be $6, and there was $3 added for Soft-Lite, and people that did not come up and sell at that price we did not sell them.

Q. You are talking about single vision lenses?—A. Yes, sir.

By Mr. GLICKFELD:

Q. And were there any instructions concerning the bifocal?—A. I do not know whether the bifocal was out at that time yet.

Q. And the price you are talking about is from whom to whom?—A. It is from the doctor or optometrist to the consumer.

Q. And that was the first time that you ever received
566 such instructions?—A. Yes. That was that they had to be sold at that price.

By the COURT:

Q. You got such instructions while you were employed at Quincy?—A. Yes, sir.

Q. But you did not get any instructions, or any such instructions, while you were at Council Bluffs?—A. Yes.

By Mr. GLICKFELD:

Q. And did you carry those instructions out?—A. I did.

Q. How?—A. Well, if I found out that the doctor did not sell at that price or he was selling cheaper than that and we knew he would not keep the price, we did not sell him Soft-Lite.

By the COURT:

Q. Did you visit doctors?—A. Yes, sir.

Q. Did you visit the customer?—A. Yes, sir.

Q. And you talked to them?—A. Yes, sir.

Q. Did you talk to them about price?—A. Yes, sir.

Q. Give us the substance of the conversation if you can remember a particular doctor, with a particular doctor.—A. I told him the price would have to be $9 for the lens, otherwise I could not make them for him, and until I knew, after being there and being in the business for a while, then I knew a lot would
567 keep the price up and those that would not I did not sell them or talk to them about Soft-Lite, or told them we could not sell them Soft-Lite.

By Mr. GLICKFELD:

Q. After you went into business for yourself with the Arnold Optical Company, did you distribute Soft-Lite lenses as a wholesaler?—A. I did.

Q. At that time you were aware, were you not, of the Soft-Lite method of distribution?—A. I was.

Mr. SEYMOUR. I object to the form of the question.

The COURT. I will sustain it.

Mr. SEYMOUR. And I move to strike out the answer.

The COURT. I will grant your motion.

Q. When you became a distributor, a wholesale distributor of Soft-Lite lenses, did you receive any instructions from the Soft-Lite Lens Company concerning the distribution of those lenses?—A. Well, I received a letter that said I could——

568 Mr. SEYMOUR. I object to what he said, if your Honor pleases, as stating the contents of the document.

The COURT. That document is in evidence.

Mr. SEYMOUR. If so, counsel can refer to the exhibit number.

The COURT. I did not want him to lead the witness. You received the letter?

The WITNESS. Yes.

Q. Do you recall in substance what the letter said?

The COURT. That is going too far.

Mr. LEHRICH. We will stipulate that he got that welcoming letter when he was appointed a distributor. There is no dispute about it.

The COURT. You cannot do that, Mr. Glickfeld. The letter is here, and you cannot ask the witness to give the substance of a letter that is in evidence. Ask him if he got a copy of a letter which is substantially the same as that, whatever the exhibit number is.

Mr. GLICKFELD. I think it is Exhibit 36.

Mr. LEHRICH. I am willing to stipulate that he got the welcoming letter; that he got the instructions contained in that bul-

letin of May 17, 1933; that he got the instructions shown in the stock price list, pages 17 to 23.

The COURT. Will that cover it?

569 Mr. GLICKFELD. That is satisfactory.

Q. Having heard the stipulation just entered into between counsel, did you carry out the instructions set forth in the various papers Mr. Lehrich has just mentioned?—A. I did.

Q. How did you carry out those instructions, sir?—A. Well I received the book of licensees or people that I could sell to, and those are the ones I sold to or did not sell.

By the COURT:

Q. You did not sell to any that were not on the list? A. No.

Q. Did you refuse such a sale?—A. Yes; if they were not on the list.

Q. And did you sell at the prices specified in that price list?—A. Yes.

By Mr. GLICKFELD:

Q. While you were with the Arnold Optical Company did you ever advise your customers concerning the prices they had to charge their customers?

Mr. LEHRICH. I object, if your Honor please, because what this witness advised them could not be binding on us.

The COURT. No; it is not binding, but is evidence of what the system was. I will let it go in.

570 Mr. LEHRICH. We stipulated what the instructions were, and the witness testified that he carried them out.

The COURT. If he wants the detail I will let it go in. I will grant you an exception.

A. Yes; it was understood that they had to sell at a certain price.

By the COURT:

Q. No; that is not the question. Did you tell them that?—A. Yes; whenever I went to them.

Q. When you visited the trade?—A. Not every time, but whenever it was necessary. When it was necessary I told them they had to keep the price up. If they wanted more, that was perfectly all right, but they had to get so much.

Q. How much did you tell them that was?—A. At least $9.

Q. What was the margin above the white?—A. $3 added to that.

By Mr. GLICKFELD:

Q. Do you employ any salesmen?—A. No.

Q. You visit the trade yourself?—A. I do, and did.

Q. Did you ever talk with any Soft-Lite salesmen concerning your sales of Soft-Lite lenses?—A. Oh, yes.

The COURT. You may direct his attention more specifically to that.

571 The WITNESS. Mr. Landis, Mr. Summers, and Mr. Singer himself stopped in to see me.

Q. In those talks did you ever talk about the prices which your retailers were supposed to charge their customers?

Mr. LEHRICH. I object to the word "supposed." Did you talk about the prices that your retailers were charging—I have no objection to that.

The COURT. That is not his question. You mean that they were required to?

Mr. GLICKFELD. Required to; yes.

A. I cannot recall that I did, with the men, after I started in business, because I understood that from being with Riggs for a good many years.

Mr. SEYMOUR. I move to strike that out.

The COURT. I do not think that your colleague will join in that motion.

Mr. SEYMOUR. I do not care whether he joins or not.

The COURT. Then I will grant it as to you, and deny it as to your colleague. I think he is rather pleased that I overrule the objection.

Q. Are you distributing Soft-Lite lenses today?—A. No.

Q. Were you taken off their wholesale list?—A. Yes.

Q. When?—A. I think it was in September 1936.

572 The COURT. Is there going to be dispute about it?—Can we get the date now?

Mr. LEHRICH. I think the witness said 1936, but that he means 1937.

Mr. GLICKFELD. I think he means 1937. I will offer in evidence two pieces of paper, one dated November 30, 1937, by R. G. Landis to the witness, and another dated December 16, 1937, written by Mr. Landis to the witness.

Mr. LEHRICH. I understood your Honor's suggestion that we take these things from the letters. I have furnished all of these letters to him, and he is picking out two.

The COURT. You can offer the others when your turn comes.

(Marked "Government's Exhibits 113 and 114.")

(Short recess.)

Mr. GLICKFELD. We have no further questions of this witness, your Honor.

Cross-examination by Mr. LEHRICH.

Mr. LEHRICH. May I ask, were those letters offered in evidence?

The COURT. Yes; they are in evidence. They are Exhibits 113 and 114.

Mr. LEHRICH. We would first like to offer a letter dated
573 June 10, 1937, from Soft-Lite Lens Company to Mr. E. Arnold; letter dated December 8, 1937, from Arnold Optical Company to Nat Singer; letter dated October 16, 1937, from Soft-Lite Lens Company to Edward Arnold, and a letter dated October 9, 1937, from Soft-Lite Lens Company to Edward Arnold. Copies have been furnished to the Government.

The COURT. Any objection?

Mr. ISSEKS. No objection.

(Marked "Defendants' Exhibits D, E, F, and G.")

Q. Mr Arnold, when you worked for the Riggs Optical Company your superior was Mr. Roy Wahlgren?—A. Part of the time.

Q. Who succeeded him?—A. Mr. Dave Ettinger.

Q. When you referred to instructions that you received from Mr. Wahlgren, those instructions were not limited to Soft-Lite lenses, were they?—A. No.

Q. He told you generally from time to time when he visited your branch or had you come up to the main office how to sell all articles, merchandise that Riggs Optical Company was handling?—A. Yes.

Q. And among the articles one of your products was of the Soft-Lite Lens Company?—A. Yes.

Q. During all of the time you were with the Riggs Optical Company, and in the time you have been with the Arnold
574 Optical Company, you received or saw price lists furnished by the Soft-Lite Lens Company?—A. You say all the time I was with Riggs?

Q. I say during all that time you received and saw price lists furnished by the Soft-Lite Lens Company; is that correct?—A. I don't remember when I got the first Soft-Lite price list. I know in the later years; yes; we had one every year, or the same one carried over.

Q. Whenever changes were made you were furnished with those price lists?—A. We were.

Q. And those price lists showed the prices to be charged by the Riggs Optical Company to the retailers; is that right?—A. That is right.

Q. When you were with the Arnold Optical Company you also received price lists showing what prices Arnold Optical Company

as a distributor would pay the Soft-Lite Lens Company for the Soft-Lite lenses; is that right?—A. Yes.

Q. During the entire period from 1923 down to 1937 did you ever see a price list, a printed price list from Soft-Lite Lens Company, suggesting or giving prices to be charged by a retailer to a consumer?—A. Printed one?

Q. Yes.—A. No.

Mr. LEHRICH. That is all.

By Mr. SEYMOUR:

Q. Mr. Arnold, were you at one time a Bausch & Lomb wholesaler?—A. Do you mean on their list?

575 Q. Yes.—A. Yes.

Q. And when did you cease to be a Bausch & Lomb wholesaler?—A. Well, the date as near as I can remember was——

Q. Wasn't it 1936?—A. In about May, wasn't it, that I was taken off the list?

The COURT. Is there going to be any dispute about the date, Mr. Seymour?

Mr. SEYMOUR. I think not.

The COURT. Then let us have the date.

Mr. ISSEKS. If Mr. Seymour knows it we will stipulate it.

Mr. SEYMOUR. I am told that it was 1936.

Mr. ISSEKS. I will take that.

The WITNESS. It was about May 1936.

Mr. ISSEKS. The witness says May, and if counsel finds that it was another date we will take that.

The COURT. It is May 1936, subject to correction.

Q. It was after that that you became a Soft-Lite dealer, wasn't it?—A. No; I started out as a Class A, and in June——

Q. 1937?—A. 1937, I believe—I raised that to distributor. Then I was taken off that file, right?

Mr. ISSEKS. Your Honor, I am a little confused. So that there won't be any confusion let us see if we can get together.

576 We have the first letter that went to his company making him a wholesaler, dated July 5, 1935.

The COURT. Yes; but then he became a distributor he says in 1937.

Mr. ISSEKS. Oh, this was a Class A wholesaler.

The COURT. That is right.

Mr. ISSEKS. It was then he was a wholesaler.

The COURT. The point that is made so far, as I understand Mr. Seymour's questions, is that he increased his classification after he was removed from the Bausch & Lomb list.

Mr. SEYMOUR. That is it.

The COURT. That is your point?

Mr. SEYMOUR. That is it.

Q. Mr. Arnold, you referred to some instructions you received from Mr. Wahlgren. When did you receive those instructions?—A. About what; about the B. & L.?

Q. No; about Soft-Lite.—A. Well, I received those when Mr. Wahlgren was president and general manager of the Riggs organization. When I was in Quincy, Illinois.

Q. Can you help us by indicating the date when you received those instructions?—A. Well, it was in the year 1924 or 1925.

Q. You cannot tell us which of those two years it was in?—A. No.

Q. How long did you remain in Quincy?—A. Until January, 1930.

577 Q. Where did you receive those instructions?—A. Well, I received them when talking to Mr. Wahlgren, when he made—I think he made two trips to Quincy while I was there, in the 4½ or 5 years. That was brought up, and I also received them at Omaha at sales meetings and things.

Q. What was the first time that you received, them and where?—A. I could not say that.

Q. Was the first time in Omaha, or was it in Quincy?

The COURT. He does not refer to the time that he was in Omaha as a manager; he refers to Omaha as being a meeting place. Is that right?

The WITNESS. Yes.

The COURT. I do not want to have any misunderstanding between a question and answer here.

The WITNESS. Do you mean whether it was when I went back to Omaha to a sales meeting, or was it when——

By the COURT.

Q. You never worked in Omaha?—A. Yes.

Q. I thought you were at Council Bluffs.—A. I worked in Omaha before I went to Council Bluffs in 1917.

Q. But you were not a branch manager?—A. Not until 1923; but I still lived in Omaha when I ran the Council Bluffs branch. I ran back and forth every day and would stop up at the office.

578 By Mr. SEYMOUR.

Q. My present question is, where did you receive your first instructions about the sale of Soft-Lite?—A. I could not remember.

Q. You don't remember whether it was Quincy or where it was?—A. No.

Q. When was it?—A. Well, it was either the latter part of 1924 or 1925.

Q. Were they written or oral?—A. Oral.

Q. Who was present when you received them?—A. I don't think anyone. It might have been at a sales meeting.

Q. I beg pardon?—A. It might have been in a sales meeting, and then we talked individually.

Q. You have not any recollection as to where it was?—A. No; I have not.

Q. Following those instructions do I understand you to say that you called on your customers and carried out those instructions?—A. Yes.

Q. Whom did you call on?—A. In Quincy? Well, Dr. Stevenson. He knew that the price would not be below $9. Dr. Mercer, the same.

Mr. SEYMOUR. I move to strike out the answer as not responsive.

Mr. ISSEKS. I did not hear the answer.

The COURT. Motion granted.

579 Q. I asked you whom you called on to give the instructions?

The COURT. The answer was not responsive. Just gives the names of those you called on. You mentioned Dr. Stevenson.

The WITNESS. Yes; and Dr. Mercer, Dr. Steiner.

Q. Will you tell us when you first called on them on receipt of the instructions?—A. That was in 1924.

Q. Can you tell us when in 1924?—A. No.

Q. Whom else did you call on?—A. Oh, I called on the people around. I called on people in Macomb, Kankakee, Hannibal, Palmyra, Pittsfield, Monroe City, Shelburn, Clarence, Media—do you want all the towns that I——

Q. These were towns under your jurisdiction as the Quincy manager?—A. That is right.

Q. As a matter of fact you were constantly calling on your customers, weren't you?—A. Yes.

Q. These calls were not made specifically with reference to Soft-Lite?—A. No.

Q. You were constantly going around to get orders from customers?—A. Well, there was a salesman also made that territory at that time.

Q. Who was he?—A. Hubbard was one of them. He is with the Hubbard somebody Optical Company in Cleveland, I believe.

Mr. ISSEKS. What is the name?

580 Q. Did you go around with this salesman, or did you go around alone?—A. I would make trips with them once in a while.

Q. How big a town is Quincy?—A. About 39,000 and something.

Q. How many optometrists and doctors prescribing for the eye are there in Quincy?

The COURT. Today, or at the time he speaks of?

Q. How many were there then, in 1924 and 1925?—A. I would say about 9 or 10.

Q. How many were there in your entire territory?—A. I could not say.

Q. Several hundred?—A. No; I don't think so. Well, there are probably several hundred; yes; but we did not have them all.

NATHANIEL SINGER resumed the stand.

Direct examination resumed by Mr. ISSEKS:

Q. Mr. Singer, approximately how many retail licensees does your company have at the present time?—A. I should say, 7,000 or 8,000. I do not know specifically.

Q. And how many retailers?—A. You asked about licensees, and that is retailers only.

Q. That is right, but how many retailers are there throughout the country?—A. Well, it all depends.

581 Q. What is your understanding; that is all I want.—A. I would say there are about 14,000 effective practitioners. Some fellows may be in one establishment, four or five. But the only one who can buy is the one boss. They list 20 or 22,000, including dead, maimed, and injured, but there are actually about 14,000.

The COURT. Establishments?

The WITNESS. Well, yes. I mean practitioners. I do not like to refer to it that way. Practitioners.

The COURT. If there are two in an office you treat them as one?

The WITNESS. One. Only one buys.

Q. The other day we were talking about Plano-Meniscus lenses.—A. Yes, sir.

Q. I want to find out from you, suppose I walked in to a retailer and I had a prescription which showed that my left eye was perfectly normal but my right eye had either astigmatism, nearsightedness, or farsightedness, one of the three or some combination of two. He would give me a pair of glasses, would he not, not with one lens but with two lenses?—A. Yes.

Q. One lens would be a Plano-Meniscus?—A. If that is what the prescription called for.

Q. I am assuming that my left eye is perfectly normal
582 and that the doctor so says. I would not have a pair of lenses with one lens?—A. You would not be likely to wear them, no. You would have to have two lenses.

Q. If my one eye was perfectly normal, it would be a Plano-Meniscus lens?—A. I cannot answer that unless I explain it.

Q. Yes; go ahead and explain it.—A. When you talk about a Plano-Meniscus lens you are talking about a lens which on prescription is used about 1 in 10,000. The case you talk of may be 1 in 10,000 or 1 in 100,000. Because an eye is perfectly normal but can benefit by a reading glass.

Q. Are you suggesting that Soft-Lite Plano-Meniscus lenses are sold 1 in 10,000?—A. I would say so. On prescription. One Plano and one astigmatic, as you said. I take your examples.

Q. I am talking about your volume of sales.—A. That is not what you asked me.

Q. I am asking you that question now. I am interested in the sales.

The COURT. The witness says that it has other uses than the one you suggested.

The WITNESS. That is right.

Q. Do you have more than one sale in 10,000?—A. Let us get together. I want to be helpful on this. You asked about a
583 prescription. An astigmatic lens for one eye and a Plano for the other. That rarely happens.

Q. What are Plano-Meniscus lenses used for?—A. Normally to soften the light; as a goggle.

Q. I walk into an oculist or an optometrist, and he decides I need Soft-Lite Plano-Meniscus lenses. How often does that happen?—A. Only too rarely, Mr. Isseks. Very rarely.

Q. You do sell Plano-Meniscus lenses?—A. We do; yes.

Q. And you do have a price list on them?—A. We do; yes.

Q. With Government's Exhibit 103 there was enclosed in Mr. Scott Sterling's letter to you a suggested price list for Plano-Meniscus lenses, was there not?—A. Yes, but those are over-size.

Mr. SEYMOUR. I object to that characterization of the document.

Mr. ISSEKS. But it is in evidence. I can characterize it, your Honor.

The COURT. It is obviously that, and he does not make it any different if he says the obvious.

Mr. SEYMOUR. I submit it is not obviously that at all.

The COURT. Then if there is any dispute about it I will hear what it actually is. But it looks to me like a price list, if I remember the exhibit.

Mr. ISSEKS. I will read it; that is the best way.

584 The COURT. No; you do not have to read it; it is in evidence.

Mr. ISSEKS. There is no prohibition against it.

The COURT. Go ahead, I have overruled the objection.

Q. First of all, here there is some writing. Do you identify the handwriting [handing to witness]?—A. No.

Q. You don't?—A. No.

Q. Do you want to look at the signature of the writer and see if it helps you out?—A. No; I still would not know. It is probably by Scott, if it was attached to his letter.

The COURT. You mean Mr. Sterling?

The WITNESS. Yes.

Q. At that time in 1939 were you putting out Soft-Lite Plano-Meniscus lenses in certain shapes? It says Lens Size 50, 57, 63, 71, and 80.—A. For the first time since we have been in business we found that there was a possibility of selling our lenses more extensively than before in goggle form, and our regular lens, the 50 millimeter, was not sufficient for a goggle because they were using much larger sizes. So whereas we used to have rough blanks in the various sizes up to 80 millimeters, we thought that we could duplicate and fill the demand for finished lenses, because they were using goggles. That is what those prices refer to, and only that.

585 Q. I want to find out what it is. You were trying to sell this new line of 50——A. Oversized lenses. They are all oversize.

Q. 50, 57, 63, 71, and 80.—A. All goggle lenses.

Q. That is what they call a Plano-Meniscus lens?—A. Yes.

Q. Before that time were you selling any Soft-Lite Plano-Meniscus lenses?—A. We were selling 50 millimeter lenses, and the same sizes in the rough blanks.

Q. They were both Plano-Meniscus?—A. The rough blank must be ground to become a Plano-Meniscus.

By the COURT:

Q. Does 50 millimeter refer to the diameter?—A. Yes, sir.

Q. Or is it the circumference or radius?—A. The diameter.

By Mr. ISSEKS:

Q. The Plano-Meniscus could be used for making a corrective lens, could it not?—A. No. The rough blank could be used for any prescription. You make one or the other out of it.

Q. That is the thing that bothered me.

By the COURT:

Q. The Plano-Meniscus lens does have a variation in thickness between the center and the rim of the glass, does it not—a slight difference?—A. Very slight.

586 Q. It is ground down to specifications?—A. That is right.

Q. So that it permits normal vision?—A. That is right.

Q. It is shaped like a lens in the sense that it has a certain curvature?—A. It is identical to any other focus of lens, but the focus is plano instead of something else.

Q. When you say "plano" you do not mean that it is absolutely without focus?—A. No.

Q. It does have some focus?—A. Well, it is supposed to have no focus.

Q. Actually it has some?—A. I would not know that. We take it for granted that it has some. Now if from the scientific standpoint it must have some or none, I do not know that. Scott would know that.

Q. Don't you grind it to permit of a variation of light entering from the rim of the lens to the center of the lens?—A. No; it is ground like any other focused lens.

Q. Exactly. But entering at an angle it has to go through a larger volume of glass, and doesn't the Plano-Meniscus lens make an adjustment for that?—A. I would not—I would not like to answer that.

Q. That is beyond your sphere of competency?—A. Well, I would not care to answer that with a man like Scott here. He could tell you that.

587 Q. That is where I got this information.—A. That is what I was afraid of. That is where I go for my information.

Mr. ISSEKS. Your Honor, I would like to have counsel product the original of this Government's Exhibit 103, because there is a lot of handwriting on it that I cannot read, and that handwriting may become important. The document itself we consider important.

Mr. LEHRICH. We have the original.

Mr. ISSEKS. Your Honor, I would like to call attention to the fact that the witness testified there were 14,000—how many did you say there are?

The WITNESS. 14,000 optometric practitioners in this country, including the dispensers; although you may find a book listing more than that.

Mr. ISSEKS. Counsel on your behalf has stated on page 54 of his trial brief that of the 30,000 retailers in the business approximately 11,000 have been appointed as licensees. Do you agree with that statement?

The WITNESS. He takes in the whole list, including the optometrists that work for other optometrists.

Mr. LEHRICH. As to the number of retail licensees, I took that from the proposed stipulation that Mr. Isseks gave us.

The WITNESS. That is right.

588 Mr. LEHRICH. I assume that he had the facilities for obtaining that.

The COURT. Let us get the facts, because the briefs of counsel are not evidence.

Mr. ISSEKS. I am not offering it as evidence, but I have asked the witness a question.

The COURT. The original statement that you made was that there were 14,000 retail establishments.

The WITNESS. There are 22,000 optometrists, there are 8,000 oculists. When you go through the list you find only 14,000 that you can ever sell to. He asked me about effective practitioners, and that is the answer. Those are the fellows we can license and

eventually sell to. Of those we sell probably two-thirds or a half, or something like that.

Mr. Isseks. Your Honor, I think if there is no objection I would like to substitute the original letter for this photostat, and give the photostats to counsel, because the handwriting thereon I think has some bearing and I do not want to go through the long process of asking what it is. I think I understand it.

By Mr. Isseks:

Q. Is that your handwriting on the side [indicating]?—A. Yes, sir.

Q. On both pages, is it not?—A. Yes.

589 The Court. Do you just want to change the numbers on the documents?

Mr. Isseks. Yes; that is all.

Mr. Lehrich. Except that the photostat also has the handwriting on it.

Mr. Isseks. I do not dispute that, but it is just unintelligible, your Honor.

The Court. Then mark the original with that same number, and the Clerk will strike the mark from the other one.

(Marked in substitution "Exhibits 103 and 103–A.")

By Mr. Isseks:

Q. In your last answer you do not mean that your company sells, but that your distributor sells; you do not sell to the retailer?—A. No.

By the Court:

Q. You do not deliver any merchandise to retailers?—A. no, but we list those, with the idea that they use the lens.

Q. You used the word "sell" as they do in sales talk?—A. That is right.

By Mr. Isseks:

Q. In Exhibit 103–A there is some handwriting. Is that your handwriting?—A. I do not think so, Mr. Isseks. I think that may be by Mr. Sterling. I do not know.

Q. After you received Government's Exhibits 103 and

590 103–A with the attached Soft-Lite Plano-Meniscus price list and 50 millimeter, 57, 63, 71 and 80 suggested as shown on the exhibit, you wrote a letter, did you not?—A. Yes.

Q. Which is Government's Exhibit 104 [indicating]?—A. I did.

Q. And you say in the letter "looks to us as if that is as good a setup as could be desired, and accordingly we are going to put it into effect precisely as shown therein."—A. May I read it?

Q. Yes, the second sentence [handing to witness].—A. Yes sir; and we did put it in.

Mr. Isseks. I now offer in evidence, your Honor, a memorandum dated April 1, 1939, to Soft-Lite distributors, which is signed R. G. Landis, three pages; to which are attached two pages of price list. I think I will mark them separately. The April 1, 1939, I offer as the next exhibit.

The Court. Any objection?

Mr. Seymour. I have my continuing objection.

The Court. I am not referring to that. Without objection, except as to the one reserved, it will be received.

(Marked "Government's Exhibit 115.")

Mr. Isseks. There is reference in this to changes, and I offer the two pieces of paper referred to therein, as Exhibit 115-A. So you will know what they are, the first one
591 on the top says, "Apply over page 3 of Distributors Price List, Corrected to Dec. 1, 1937. Soft-Lite Single Vision Lenses. Corrected to April 1, 1939."

The second page says: "Apply over inside front cover of Distributors Price List, Corrected to Dec. 1, 1937. Soft-Lite Plano-Meniscus uncut lenses. Effective as of April 1, 1939."

(Marked "Government's Exhibit 115-A.")

By Mr. Isseks:

Q. When you were working on your proposed new price list effective as of April 1, 1939, you of course took up the matter of changes long prior to that? You recall there was a memorandum going to the trade in February saying you were going to have one as of April. The question is whether you took it up long before that time.—A. With whom?

Q. With whoever you did. Somebody.—A. Yes, we gave it consideration and discussed it.

Q. Some time prior thereto?—A. Yes.

Q. About two months; is that a fair statement, prior thereto, or more than that?—A. We probably consider our selling prices periodically to make sure they are right.

Q. And isn't it a fact that during the same period of time Bausch & Lomb was considering changes in its prices?—
592 A. I would not know what they were doing.

Q. You did not know about it?—A. No, unless they told us about it. I do not recall them telling us. Unless it was on a special line of lenses they were introducing.

Q. We will come to that. Isn't it a fact that you talked to Mr. Ramaker about your proposed new price list?—A. Undoubtedly.

Q. Isn't it a fact that you discussed with him a proposed quarterly bonus plan to wholesalers?—A. If it was part of our general sales picture I very likely would. I discuss lots of things with him.

Q. Let us find out what you discussed with him. In that connection I am talking about your proposed new price list which you were considering some time prior to April 1, 1939, and which you put into effect after that date.—A. Yes.

Q. Directing your attention to that subject matter, what did you talk to Mr. Ramaker about?—A. I probably talked to him about our buying price, and he probably wanted to know what our selling price would be, and we discussed it back and forth, and we then tried to learn what our final buying price would be. I thanked him for his suggestion and said we would give it consideration. If we liked the suggestions we would put them into effect, if I did not we would not. The decision was always ours.

Q. In connection with the discussions regarding your
593 selling price you discussed with him first your selling price to the wholesaler, did you not?—A. I first found out what it cost.

Q. I assume you did that. You said that once and I accept it. I am going into another phase of it. You said you discussed the price to you and the price you sold it at. Directing your attention to that phase of it, did you discuss with him the price from you to your wholesalers?—A. We discussed all phases of our buying and selling, in order to——

The Court. The answer is yes or no to that question.

The Witness. He dropped part of it. I did not get what he dropped.

The Court. He forgot to drop his voice.

Mr. Isseks. I forgot to drop my voice, that is all.

The Court. The answer would be yes or no.

The Witness. Did we discuss price from wholesaler to retailer?

Q. From your company to the wholesaler?—A. Very likely.

Q. Did you discuss with Mr. Ramaker the price from your wholesaler to your retailer?—A. You are asking me about a specific time?

594 Q. Prior to April 1, 1939.—A. At that particular period?

Q. Yes.—A. If it would have any effect.

Q. I would like an answer to that question.—A. I cannot answer it any other way.

The Court. Then say you cannot answer it.

The Witness. I cannot answer it any other way.

Mr. ISSEKS. I will take your answer. I offer in evidence a letter dated March 22, 1939, addressed to Mr. Landis, by Mr. Ramaker.

Mr. LEHRICH. No objection.

The COURT. It will be received.

(Marked "Government's Exhibit 116.")

Q. Mr. Singer, I show you this document Exhibit 116, and the reference there by Mr. Ramaker to a conversation which he had with you over the phone about your policy memorandum.—A. This is about a price memorandum.

Q. That is right, you were talking about prices to the wholesalers and retailers, weren't you?—A. No; to the wholesalers. We do not have a bonus to the retailer. This is all about bonus.

Q. I know, but your price lists, your price policies, that went to the wholesalers, also included their prices to the retailers, did they not?—A. This is not what this refers to. This is very specific.

595 Mr. ISSEKS. I would like to have the actual memorandum, if I may, your Honor, to which the reference is made. I cannot figure it out, I am frank to say.

The WITNESS. I can explain it.

Mr. ISSEKS. No; I want the memorandum.

The COURT. There is a request for a memorandum. Is it produced?

Mr. ISSEKS. Certainly the gentlemen who wrote it and talked about it ought to know what they are talking about. I have tried hard to figure it out.

The COURT. Let us eliminate that. Let us have the statement.

Mr. ISSEKS. My statement does not mean evidence. If I had it I would show it to them, but I do not know what it was.

Mr. SEYMOUR. We do not seem to have it.

Mr. ISSEKS. What about counsel for Soft-Lite?

Mr. LEHRICH. Apparently it was a memorandum sent to Mr. Ramaker.

The COURT. Have you a copy of it?

Mr. LEHRICH. That I do not know, because this is the first time we were asked for this.

Mr. ISSEKS. Your Honor, this is of fairly recent date and I think it ought to be produced.

The COURT. Yes.

596 Mr. LEHRICH. I just do not know whether we have it, that is all.

The WITNESS. You and I can clear this up.

Q. Mr. Ramaker is referring to a piece of paper which you saw, which your company put out, is he not?—A. Apparently, yes.

Q. There is no dispute about that, is there?—A. No; that is what it is.

Q. Something that you or your associate Mr. Landis gave him?—A. Yes.

Q. It is something that you kept a copy of, is it not?—A. I don't know.

Q. He is referring to a conversation which he had with you with regard to this particular document?—A. No; he is not, if I may say so.

Mr. LEHRICH. Your Honor, I understand from Mr. Siegel who is connected with our organization that that refers to the memorandum or bulletin that we sent out to all the wholesalers talking about a bonus.

The WITNESS. That is right.

Mr. LEHRICH. If we have it we will be glad to produce that.

Mr. ISSEKS. I thought we had it.

The WITNESS. Yes, you have it.

Mr. ISSEKS. I cannot figure out which one it is. I would like to know what one they are talking about, and
597 then I can clear this up.

The COURT. Mr. Lehrich has made an explanation of which one it is.

Mr. LEHRICH. It is a bulletin sent to the wholesalers in general, and sent to Mr. Ramaker, and that is the one he is talking about.

The WITNESS. That is right; telling about the new prices to the wholesalers.

Mr. ISSEKS. That is what I want to get. I cannot interrogate the witness about it unless I have it, and I am trying to get it.

Mr. LEHRICH. I am told it is the bulletin dated February 25, 1939, and the reference to the bonus plan on the top of page 2 of that.

Mr. ISSEKS. May we have it in evidence, your Honor?

The COURT. Yes, certainly. I think you have it in evidence.

Mr. ISSEKS. I think we have it in evidence, but I am trying to find out which one it is. We have in evidence Exhibits 101 and 102.

Mr. LEHRICH. It is in the price book, I am told, that I gave you.

Mr. ISSEKS. We will find out which one it is. There are
598 two of them. It is apparently Government's Exhibit 102, your Honor. That is all I was trying to find out. I take that as a stipulation from counsel for both groups of defendants, that the reference made in Government's Exhibit 116 is to Government's Exhibit 102.

Mr. LEHRICH. Your Honor, I do not stipulate. I was simply told that the memorandum refers to that. Mr. Singer will probably know.

The COURT. He will put the question in just a moment.

Mr. SEYMOUR. Subject to correction we are ready to stipulate that.

The COURT. And how about you, Mr. Lehrich?

Mr. LEHRICH. I am, too. I simply want to see——

The COURT. Yes, take all the time that you want. It is stipulated that the reference is to Exhibit 102 in that Exhibit 116.

By Mr. ISSEKS:

Q. And more specifically, Mr. Singer, that reference is to the first full paragraph on the second page of Exhibit 102 [handing to witness], is it not?—A. Yes, sir.

Q. The last sentence in Mr. Ramaker's letter refers, does it not, to your price list which went to the wholesalers and which showed not only the price list from you to the wholesaler but from the wholesaler to the retailer?—A. The only thing this letter
599 talks about is our bonus to the wholesaler, and that is all it referred to, Mr. Isseks. It is just the bonus to the wholesaler. We have no bonus to the retailer.

Q. My question has not been answered. My question is whether the price list to which Mr. Ramaker makes reference in the last sentence of his letter, where he says your policy and price set-up is a price list which includes not only price from your company to the wholesaler but a price from the wholesaler to the retailer.—A. I do not see that word "policy and price set-up" there.

Q. I am very sorry [indicating].—A. It refers to the price list to the wholesalers.

Q. At that time wasn't the price list that you gave to the wholesaler a price list which also included the prices from the wholesaler to the retailer?—A. I do not think so, unless we made a change. That would be separate. We always had a price list to the wholesaler, we had a price list to the stock licensee, and a price list to the prescription account.

The COURT. Separate documents?

The WITNESS. Yes, sir.

Mr. LEHRICH. Your Honor, this bonus plan appears in our price list to the wholesaler, because the wholesaler is the only one who comes under the bonus plan.

600 Q. Now after you got the letter, Government's Exhibit 116, did you have a discussion with Mr. Landis about the suggestions made by Mr. Ramaker about the company's plans to the distributors?—A. Very likely.

Q. Did you communicate with Mr. Ramaker with regard to his suggestions?—A. I do not recall.

Mr. ISSEKS. At this time, your Honor, I offer as the next Government's exhibit, a letter dictated March 3, 1939, and underneath

it says March 6, 1939, addressed to Mr. Ramaker by Mr. Landis, and the copy I have been furnished with by Soft-Lite shows that it came back apparently with a notation from Mr. Ramaker, and if I am wrong in my construction, I will ask for the production of the original which will show exactly what happened.

The COURT. Is there any objection?

Mr. SEYMOUR. If your Honor please, I am not pressing objections, of course, as to materiality and relevancy on these communications between the two corporations, but I assume that that matter can be presented at the end of the Government's case or at the end of the whole case, because the discussions, as your Honor suggested yesterday, about price and that sort of thing, are no proof of conspiracy whatever.

The COURT. I am not passing on weight now.

601 Mr. LEHRICH. I understand Mr. Isseks is right and that is a correct copy, and I have no objection.

(Marked "Government's Exhibit 117.")

Q. I show you Government's Exhibit 117, Mr. Singer, and ask you if it is not a fact that you withheld the printing of your price lists until you heard from Bausch & Lomb with regard to the printing of their February 27th price list on their products as distinguished from any Soft-Lite products?—A. I presume we waited to see what was going on in the trade before we finally printed ours.

Mr. ISSEKS. Your Honor, I ask that the witness be directed to answer my question.

The COURT. Yes. What is your answer to the question, yes or no?

The WITNESS. On that basis the answer is yes.

The COURT. On any basis the answer is yes.

The WITNESS. Well——

Mr. ISSEKS. I move to strike out the words "on that basis."

The COURT. Yes. If you want to offer an explanation you can do that.

Mr. ISSEKS. I will let him make the explanation now if he wants, but the answer is yes.

The COURT. The answer is yes.

Mr. ISSEKS. At this time, your Honor, I offer a letter
602 dated March 31, 1939, addressed to Mr. Ramaker, signed Soft-Lite Lens Company, R. G. Landis.

Mr. LEHRICH. No objection.

The COURT. It will be received as Government's Exhibit 118.

(Marked "Government's Exhibit 118.")

Q. I show you Government's Exhibit 118 and ask if it is not a fact that you did withhold the issuing or rather distribution of your price lists until Bausch & Lomb distributed its price lists?—A. I should say from this letter that the answer is yes.

Q. Thank you, sir. Isn't it a fact that in 1939 Soft-Lite Lens Company took up with the Bausch & Lomb representatives the matter of the issuance of stock price lists to your retail licensees?—A. We might have. We discussed all matters very frequently.

Q. In other words, in addition to discussing the proposed price lists of Soft-Lite lenses to the wholesalers you also took up with Bausch & Lomb the matter of price lists from the wholesalers to your licensees?

Mr. SEYMOUR. I object to the form of the question. Counsel incorporated a great many things that are not yet in evidence and I don't think he is entitled to do that.

The COURT. If you want to, you may reframe it.

Mr. ISSEKS. I will be glad to.

603 Q. You testified already to talking to representatives of Bausch & Lomb with regard to the proposed new price changes of Soft-Lite lenses to its wholesalers?

Mr. LEHRICH. I object to that, if your Honor please. He has talked about one such discussion. Now if counsel will limit himself to the testimony already adduced——

Mr. ISSEKS. I submit the witness said they talked about it all the time.

Q. (Question read.)

The COURT. The answer to that is yes or no. The witness ought to know whether he so testified or not.

A. I cannot answer it that way.

Q. You answer it in your own way. Did you talk to Bausch & Lomb representatives about changes in prices to wholesalers—prices of Soft-Lite Lens Company to wholesalers?—A. At that time; yes.

Q. Any other time besides 1939?—A. On occasion when we considered making changes in prices that involved changes in cost, we would discuss those matters.

Q. What are those matters, so we will understand each other?—A. We would discuss what our cost would be and we might be asked what our selling price would be so that the maker of the price to us would be able to figure out whether or not it

604 would pay to give us a reduction because they would get increased volume and our prices have gone down since the very beginning of our business from time to time and as our volume grew. Prices have gone down to the wholesaler and to the retailer. We do not know what the retailer gets.

Mr. ISSEKS. I move to strike out the last sentence, "we do not know what the retailer gets."

The COURT. No; I am not going to strike it out.

Q. Do you want to stand on the statement you do not know what the retailer gets for your product?—A. In line with what

I have just been talking about. We are considering the volume at the factory.

Q. You are not interested at all in what the retailer gets?—A. Is that in line with what we are talking about?

Q. I am asking you the question.—A. Are we interested in what the retailer gets?

Q. Yes.—A. So long as he gets a price commensurate with the service he renders, so that he can buy our quality of lens, what the consumer pays him does not matter so long as he maintains a reputation or prestige that the type of practitioner that we like to sell to should.

Q. Isn't it a fact that your retail license agreement in existence today, both as to stock and prescription, specifically states
605 he must maintain local prevailing prices?

Mr. LEHRICH. I object to that. He is misquoting the clause.

The COURT. Overruled. If he has misquoted the clause, the witness is familiar with his own literature.

Mr. ISSEKS. The witness has been directed to answer the question, your Honor.

A. We have gotten out a great deal of literature, a great deal of advertising. That is the principal part of our business.

The COURT. Then you can say you do not remember, but show me the document.

Q. Isn't it a fact that Government's Exhibit 45, which is your present registered dispensing license, stock, provides "Licensor hereby grants to licensee a revocable, nonexclusive and nontransferable license to purchase Soft-Lite lenses and lense blanks from any of the duly appointed Soft-Lite distributors or Class 'A' and 'wholesalers' and to resell said lenses at prices prevailing in the locality in which licensee conducts his practice or business."—A. That I remember well——

The COURT. The answer is yes or no.

The WITNESS. That is a different question. Yes, to that.

606 Q. Isn't the same provision in your prescription license?—A. Yes. You offered me a prescription license.

Q. This is a stock license.—A. They are alike.

Q. So you are interested in what the licensee does as far as local prices are concerned.—A. Only as part of the type of practice that he operates.

Q. Now I will go back to what we were talking about: have you discussed the proposed price revisions with the Bausch & Lomb representatives from time to time before you made the revisions?—A. Yes.

Q. Did you discuss with Bausch & Lomb the proposed revision of the prices from your wholesaler to your licensed retailer?—A. At times, yes.

Q. Thank you, sir.

Mr. LEHRICH. I submit that the "thank you" should not belong in the record.

Mr. ISSEKS. I will strike out the "thank you." I now offer in evidence what I understand to be a copy of a longhand memorandum to Mr. Ramaker by Mr. Landis, dated "En route Kansas City to Salt Lake 6/18/39."

The COURT. Is there any objection? Without objection it will be received as Government's Exhibit 119.

(Marked "Government's Exhibit 119.")

607 Q. Isn't it a fact that your company, Soft-Lite, tried to maintain a differential in price from wholesaler to retailer between regular white lenses—I mean by differential a higher price, but a differential. Do you understand my question?—A. No.

Q. I don't want it to confuse you, I assure you.

The COURT. Call his attention to the letter and he will explain it.

Mr. ISSEKS. I am coming to another matter. This Cruxite is also a tinted lens.

Q. Cruxite is a tinted lens, isn't it?—A. Yes, sir.

Q. Isn't it a fact that your company, Soft-Lite, tried to have a differential in price between the price at which other distributors of lenses put out white lenses of the same high quality, let us say?—A. Mr. Isseks, all absorptive lenses sell for more than whites.

Mr. ISSEKS. I am sorry, your Honor, but the witness is very intelligent and had two years at Columbia Law School——

The COURT. The argument is unnecessary. You want a more direct answer?

Mr. ISSEKS. That is right.

The COURT. Reread the question.

Q. (Question read.)—A. Our price is always higher than that of white lenses of anybody's make.

608 Q. Wasn't there an understanding between your company and Bausch & Lomb that there would be a fixed differential——

Mr. SEYMOUR. I object to the form of the question.

The COURT. No; I will permit it. Overruled.

Q. (Continuing.) Between Soft-Lite lenses and other lenses, first quality?—A. No.

Q. You say that without any possible doubt?—A. No doubt whatsoever.

Q. All right, we will come to that.

Mr. ISSEKS. I now offer in evidence an intercompany memorandum dated December 17, 1935, from Mr. Ramaker to Mr. Hallauer. I have a photostat of the original but the only copy we had, your Honor, was so blurred that I have had a typewritten copy made for your Honor, or I can offer the typewritten copy.

The COURT. Any way you wish.

Mr. ISSEKS. Now, your Honor, I call for the production by both corporate defendants——

The COURT. What about this document of December 17th, 1935?

Mr. ISSEKS. There is silence. I always assume silence is consent after it is prolonged.

The COURT. If there is no objection it will be received.

609 (Marked "Government's Exhibit 120.")

Mr. ISSEKS. I call for the production of letter referred to in here. It says "We have written them today", namely, a letter dated December 17, 1935, and I call for the production of that letter, "advising them that our prices, effective as of the date of publication of their new prices, will be used on white single-vision lenses set up on both uncut and semifinished, adding a 10 cent differential less the usual one-third discount."

Mr. SEYMOUR. Do we have to have this all on the record?

Mr. ISSEKS. If you want to strike it off and save a few pennies, all right. I am perfectly willing.

Mr. LEHRICH. You asked for the production of a letter. I gather the letter was written to the Soft-Lite Lens Company and if we have not furnished it up to now we will try to get it.

The COURT. It is apparently a letter from Bausch & Lomb to Soft-Lite.

Mr. LEHRICH. I do not know whether the Government has that now or not.

Mr. ISSEKS. We have not got it. We would offer it if we had it.

Mr. LEHRICH. If we have it we will give it to you right away; otherwise we will look for it.

610 The COURT. Proceed to your next point.

Mr. ISSEKS. I assume that counsel for Bausch & Lomb will see if they can locate their carbon of it.

Q. I show you the first full paragraph of this memorandum which I assume you have never seen, and ask you whether it does not refresh your recollection that there was an arrangement between Bausch & Lomb and your company that there would be a differential in price, a fixed differential, on Soft-Lite lenses as compared to white lenses of the same quality.

Mr. SEYMOUR. If your Honor pleases, it seems to me that in the interest of clarification Mr. Isseks ought to say price to whom.

Mr. ISSEKS. I am trying to find out.

The COURT. The question is simply, does it refresh his recollection.

The WITNESS. Yes; it does.

Q. And there was a fixed differential.

The COURT. Now put your question.

Q. The question is whether there was a fixed differential in price with regard to white lenses distributed by them and Soff-Lite lenses distributed by you.

The COURT. To whom?

Mr. ISSEKS. Wholesalers.—A. No.

611 Mr. LEHRICH. Is the differential in the cost to us or——

The COURT. No; differential in price to the wholesaler.

The WITNESS. The answer is no.

Q. What is the Balcor?—A. Six base curve, regular series Bausch & Lomb white lens.

Q. And that was a lens of equal quality in white as your Soft-Lite lens of the same base curve?—A. Yes, sir.

Q. Except for the fact yours was tinted, rose tinted, and theirs was white, they would be identical, wouldn't they?—A. You are talking from the standpoint of appearance only? You have a different type of lens.

Q. I am trying to find out what the difference is?—A. That is a long story. Our lens has certain properties you do not have in a white lens. From the standpoint of appearance ours is a rose tint and theirs a white, but otherwise the appearance is identical.

Q. I said except for the rose tint and the Soft-Lite part of it, but the Soft-Lite has the foci and everything else just the same?—A. Yes; the same curves and the same quality.

Q. Now you notice a reference there, and I am going to ask you first, while it is a document written by somebody else, if you can explain the difference in differential?

612 The COURT. For what?

Q. Referred to in the second and third sentences. You notice the writer says, "Adding a 10 percent differential less the usual one-third discount. On glass blanks we have made the differential 15 cents list."—A. I think there is a little error in the reading.

Q. I did not intend to read it wrong.—A. It is 10 cents and not 10 percent.

Q. I am sorry. 10 cents and 15 cents.—A. Yes, sir. That has been the formula on which we have been buying from Bausch & Lomb for many years and that is all it refers to; how we buy.

The COURT. What does that sentence mean, if you know?

The WITNESS. We pay the white prices that Bausch & Lomb charge for their white Balcor and Orthogon lenses, less the discount to the wholesaler, plus 10 cents per pair on uncut and 15 cents per pair on the glass blanks, less the same one-third.

Q. That is the price from Bausch & Lomb to Soft-Lite.—A. That is all.

Q. Bausch & Lomb was not selling anybody else?—A. Only us.

Q. They were not selling any Balcor lenses manufactured to anybody else as far as you know?—A. Everybody on the
613 list.

Q. Manufacturers? To whom were they selling Balcor white lenses on the same base they were selling you?—A. We did not buy Balcor white lenses.

Q. I understand that. No one else was acting as distributor the way you were an exclusive distributor for white lenses, was there?—A. No. They sold their Balcor regularly to all their wholesalers.

By the COURT:

Q. Was it on the same price list, plus 10 per cent?—A. No; because they were not buying Soft-Lite. That only applied to Soft-Lite.

Q. This was a bookkeeping matter?—A. No; this is our extra price.

Q. Who were they selling a Soft-Lite to in the same manner they were selling wholesalers?—A. To the wholesalers.

Q. And the price was the same as the Soft-Lite to you except there was a difference of 10 cents?—A. Yes; for the glass.

Q. Is that what it means?—A. Yes, sir.

The COURT. The witness says that is what those words mean.

Mr. SEYMOUR. In view of the explanation, I move to strike out as irrelevant and immaterial the testimony about this differential and this exhibit, on the ground they have not any
614 bearing on the issues in this case. I did not object because I wanted your Honor to have it clarified, but it seems to me that the cost to Soft-Lite or the price to Soft-Lite could not possibly have any bearing in this case.

The COURT. It is not directly relevant on the conspiracy of course, but it helps to explain the whole financial and commercial setup and I will overrule your objection and deny your motion.

Mr. SEYMOUR. Exception.

By Mr. ISSEKS:

Q. Did I understand you to say that Bausch & Lomb sold its distributors at a price which was ten cents less than the price they sold to you who took their whole quantity of Soft-Lites?—A. You are talking about two different products, Mr. Isseks.

Q. I am talking about Balcors.

The COURT. He wants to know whether that is what you said.

The WITNESS. No. I was talking about Soft-Lite on Balcor base curves and he is talking about Balcor white lines.

Mr. SEYMOUR. May I have an objection to this whole line. It seems to me the business relations between the two companies, except as they bear on the conspiracy charge, are wholly irrelevant.

615 The COURT. I will overrule the objection.

Mr. SEYMOUR. Exception.

The COURT. Mr. Witness, is it a fact that Bausch & Lomb sold Balcor lenses to Balcor wholesalers at a price which was equal to the price they charged you for Soft-Lite lenses, less 10 cents?

The WITNESS. Less the differential which is 10 cents.—Yes, sir; that is a fact.

Q. To all their wholesalers?—A. Yes, sir.

Q. When you sold to your wholesalers the tinted lens for which you were paying 10 cents extra, less a discount, you had a price to the wholesaler, did you not?—A. Why, surely.

Q. To make a profit?—A. Yes.

Q. So there was something in addition to that——

Mr. LEHRICH. Now, if your Honor pleases, I object——

The COURT. This is a good place to stop. I would like to see counsel a few moments in my chambers, and we will resume at two-thirty.

(Recess until 2:30 p. m.)

616 AFTERNOON SESSION

NATHANIEL SINGER, resumed the stand.

Direct examination continued by Mr. ISSEKS.

Mr. ISSEKS. Your Honor, at the beginning of the trial I referred to the fact that I had an understanding with counsel that there was to be no dispute about the authenticity of documents or truth of the matter asserted. I have not made that same statement since because I assume it has been continuing so long as counsel have not advised to the contrary, and my statement made at the beginning of the trial applied to every document I have offered so far produced by them.

Q. Mr. Singer, isn't it a fact that the prices from Bausch & Lomb to your company have been given to you on the understanding that you would carry out certain specified prices to wholesalers, and that in turn the wholesalers would carry out a certain price policy announced by Soft-Lite Lens Company?—A. I am not sure that I am clear on it. May I have it restated?

The COURT. Let the reporter read it.

Q. (Question read.)—A. Insofar as the first part is concerned in recent years when we got price reductions the answer is yes; that is, as regards their giving us prices on the understanding that the prices we discussed, and then told them we had decided
617 to charge, were the ones we were going to charge the wholesaler.

Q. Didn't they also say that the prices Bausch & Lomb gave you were conditioned on your price policy from the wholesalers to retailers being carried out?—A. I cannot answer that that way.

Q. All right. I will see if I can refresh your recollection. Mr. Koeth—please pronounce the name.—A. Keith.

Q. Just as if spelled K-e-i-t-h?—A. I think so.

Q. Who was he?—A. He was one of the assistants in the sales department.

Q. Of Bausch & Lomb?—A. Yes.

Q. Do you recall a conversation with him on March 6, 1936, at which there were discussions regarding prices from Bausch & Lomb to you and your price policy to wholesalers and from the wholesalers to the retailers?—A. I do not recall any particular discussion but I say that that comes in line with discussions we have had with people in the sales department.

Mr. Isseks. At this time, your Honor, I am going to offer a series of correspondence as to the truth of the matter asserted and also elaborate on the witness's testimony. I offer first, your Honor, a letter dated March 10, 1936, addressed to the Soft-Lite Lens
618 Company, attention Mr. Landis, signed Bausch & Lomb Optical Company, Lens Sales Department, and in the left-hand side it says, "F. J. Koeth."

Mr. Seymour. This again deals with the subject of prices from Bausch & Lomb to Soft-Lite which I think is not involved in this case, and I made the objection before and your Honor overruled it. It applies to this as well.

The Court. I will overrule it again.

Mr. Seymour. Exception.

(Marked "Government's Exhibit 121.")

Q. Mr. Singer, I show you Government's Exhibit 121 and you note there is a reference in the first paragraph to an understanding arrived at on Friday, March 6th, "regarding future billing of Soft-Lite lenses and lens blanks," and apparently that refers from them to you, does it not?—A. Yes, sir.

Q. Then the third paragraph says, "Future prices of Soft-Lite lenses in Orthogon and Balcor single-vision uncut and semifinished lenses will be based on our white prices according to our current stock price list, dated February 16, 1936, with the understanding that the schedule pertaining to distributors' purchases submitted

by the Soft-Lite Lens Company, remain in force and effect."—A. That is what I said yesterday.

619 Q. Going to the bottom of the same page: "This is with the understanding that sales of Soft-Lite lenses to distributors be on the same basis as white and that the range of stock foci in Soft-Lites will be identical with the range of stock foci in white on distributors' purchases. Our acceptance of this basis for billing is contingent upon maintenance of the resale policy of the Soft-Lite Lens Company as outlined in your letter, 'to distributors on prices,' to the effect that a reduction of 10 cents per pair on single vision uncut, and 5 cents per pair on single vision semi-finished Soft-Lite lenses will be made from prices listed in your special net 'stock price list to distributors.' In the event of any change in policy the amount cited shall be passed on to the distributors in another form." Does that refresh your recollection that they made the prices in 1936 on the contingency—I will use their words——

The COURT. On the contingency stated in the first full paragraph on page 2 of Exhibit 121.—A. They gave us those prices if we carry out the prices at which we said we were going to sell the distributors.

Q. And also the resale price?—A. To the distributor.

Q. He says the resale policy of the Soft-Lite Lens Company as outlined in your letter to distributors on prices.

620 The COURT. What exhibit does that refer to?

Mr. ISSEKS. I do not know yet. I would like to have the two memorandums here referred to in this paragraph "To distributors on Prices" and "Stock price list to distributors."

Mr. LEHRICH. Counsel has that letter. It specifically refers to the March 1936 price list, and you have all the bulletins we issued at that time.

Mr. ISSEKS. Maybe we can show them all to the witness and he can tell what they are. Unfortunately, we do not know what they are.

The COURT. That is, you may have it, but you do not know which of the documents you have is referred to.

Mr. ISSEKS. That is right. I have no such document named "To distributors on prices."

The COURT. It is identified as a letter.

Mr. ISSEKS. That is right. We do not have any such thing. These are all the pieces of paper that were given to us relating to this March distribution. Perhaps the witness can look at it and tell us which one it is and we have no objection if he confers with his counsel or associates.

Mr. LEHRICH. I think we can facilitate it in just a moment. I understand there are three letters—one dated March 28,
621 1936; one dated March 25, 1936, and another dated March 25, 1936. Those are the three letters to distributors at that time.

The COURT. But this letter, Exhibit 121, is dated March 10th and seems to apply to an earlier document.

Q. You talked to the Bausch & Lomb people before you gave it to the trade; did you not?—A. Talked about what?

Q. About those proposed letters to go to the distributors?—A. We talked about the proposed prices to distributors.

Q. And proposed letters?—A. No. We prepared the form. We talked about the prices. The form letter is prepared after we decided on our price and what our policy is.

Q. Mr. Koeth is referring to something he was shown which he says was "Your letter 'To distributors on prices.'" Was that shown to him before it was sent by you to the distributors? That is the question.

The COURT. Maybe counsel can agree on that.

Mr. LEHRICH. I will know in a moment.

Q. Isn't it a fact, Mr. Singer, that before you issued the price list to the wholesalers and before you issued the memorandum accompanying it, or letter accompanying it, you took the matter up with Bausch & Lomb?—A. Only insofar as the prices themselves were concerned, because they were interested in what we were going to sell at, before they would give us a definite assurance as to a cost price.

622 Q. Did you show them the proposed letter going out ahead of time?—A. I don't know whether it was in the form of a letter or form of memorandum on prices. We might have sent them an advance copy so they would know whether or not they could give us the price. I would not know which unless you showed me a document which would make it clear for me.

Mr. ISSEKS. I call for the two documents referred to in this paragraph, your Honor.

Mr. LEHRICH. We do not have anything dated prior to that and I am willing to concede that they were probably prepared and discussed prior to the mailing date. We did not prepare a document of this kind on the very date we mailed it. These are all copies.

Mr. ISSEKS. I was not able to find out and neither were my associates, and we would like to know what they are referring to.

The COURT. He says it refers to a letter dated March 25th, I think.

Mr. LEHRICH. Yes; our mailing it on that date, and I am willing to concede that the papers mailed on that date were prepared some time prior.

Q. I show you letter dated March 25, 1936, to Soft-Lite licensees, "New Price Structures" and counsel says it may
623 have been one of those documents, and I ask you whether that is one of the documents referred to in Government's Exhibit 121?—A. The letter Mr. Koeth is referring to referred to a letter to distributors. The one you are showing me is to licensees. Obviously that could not have been the letter.

The COURT. The question is, which one is it?

Q. Now look at Government's Exhibit 121, the first full paragraph on the second page, and then I show you the documents which your counsel has handed me, a series of them dated March 25, 1936, and tell us to what Mr. Koeth makes reference when he says "Your letter 'To distributors on prices,' and 'Stock Price List to Distributors.' "—A. I should say he refers to the letter to the distributors' executives, dated March 28, 1936, in which we told them what the net set-up in prices were.

Q. But that has no statement thereon headed "To distributors on prices," is that right?

Mr. LEHRICH. Mr. Koeth's letter does not say the letter itself had a notation on it. He says it was a letter to distributors.—A. That is addressed to Mr. John Jones, president of some optical company, and when we wrote to the wholesaler executives we always filled in individually.

Q. He says that this letter "To distributors on prices"
624 was to the effect that "a reduction of 10 cents per pair on single vision uncut and 5 cents per pair on single vision semi-finished Soft-Lite lenses will be made from prices listed in your special net 'Stock Price list to distributors.' " See if there is any reference to that effect or the effect of a reduction in that document from which you can say that is the one he refers to.

Mr. ISEEKS. Your counsel suggests to me there is nothing in there on that.—A. There is a price list attached thereto. Where is that?

Mr. LEHRICH. There is an information sheet and it is probably on there.

Mr. ISEEKS. Please. I am trying to find out. I was not there. I had these papers before but I could not figure it out. If I knew, I assure your Honor I would tell him which one it was.

The WITNESS. To this must have been attached the distributors price list.

625 Q. To what?—A. To this form.

Q. Now you have another piece of paper than the one I was talking about?—A. Still part of the same thing.

Q. All part of the same thing, but let us get them all together so we will know what they are. So far we have had four pieces of paper all part of the same thing?—A. I do not know. What subject matter are you talking to me about?

The COURT. He wants to know what the documents are that Mr. Koeth refers to, that is all.

Mr. ISSERS. That is right, and this witness gave Mr. Koeth a document, as I show by another piece of paper.

The WITNESS. March 28, 1936, is the letter. There must have been a distributor's price list attached to it showing the bonuses to the distributors that would prevail after that time.

Q. Did that show a reduction of 10 cents per pair?—A. Yes. What he asks is what we have in it. What it says is "I will give you this cut if you pass it on, but I want to know definitely that you will pass it on."

Q. Let us see the piece of paper.—A. It would be in the price list itself.

Q. Look around.—A. There must have been a distributors price list.

626 Q. Let us see if I can figure it out. I will try again.—A. Wait a minute; I know what it is. You and I have just been reading the Class A list. We did not have a bonus to retailers. Here it is; I have got it. We were just looking at the Class A.

Q. This is the distributors [indicating]?—A. Yes.

Q. And this is the distributors, too [indicating]?—A. Yes. That is the Class A wholesaler, not the distributor.

Q. These two [indicating] are distributors?—A. This [indicating] is the thing we are talking about, and it will tell you right there what it is. That is the distributors. We had mixed in there the Class A wholesalers. Here it is. It tells about the bonus that he is talking about:

He says that at the end of each quarter the check will be mailed to the distributor figured at the rate of 10 cents per pair on single vision lenses uncut, and .05 cents per pair on single vision semi-finished Soft-Lite lenses, purchased during the preceding quarter.

Q. This is the document then——A. That is what he is talking about.

Q. That Mr. Koeth saw, or had seen, at the time he sent your company that letter Exhibit 122?—A. That letter; yes.

627 Q. He refers there to your special net stock price list to distributors.—A. Yes.

Q. Have you got that?—A. It is in there.

The COURT. This simply says it will be 10 cents below the then prevailing price list.

The WITNESS. No; it talks about the bonus, Judge. There is probably a change in the bonus.

The COURT. He says there will be a reduction of 10 cents and 5 cents from the price listed in the special net stock price list.

Mr. ISSEKS. I am trying to find out if they have here a copy of that document designated by the writer of this exhibit "Net Stock Price List to Distributors."

The WITNESS. Here it is right next to it—price list to distributors.

Mr. ISSEKS. I would like to offer in evidence, your Honor, two pieces of paper which the witness states were referred to by Mr. Koeth. One has at the head in ink "To Distributors," and then typed "Outline of Information Regarding New Price Structure."

The COURT. Is there any objection?

Mr. SEYMOUR. Are you offering two documents? Because I have seen only one.

The COURT. He has offered the one now. Any objection?

628 Mr. SEYMOUR. I have the same continuing objection to it.

The COURT. It will be received as Exhibit 122.

(Marked "Government's Exhibit 122".)

Mr. SEYMOUR. This next exhibit is subject to the same objection.

The COURT. Is there any objection to that?

Mr. LEHRICH. No objection.

The COURT. It will be received.

(Marked "Government's Exhibit 123.")

By Mr. ISSEKS.

Q. Mr. Singer, you will note in Government's Exhibit 121, in the next to the last paragraph, there is this statement: "This will also confirm discussion and understanding to establish a new extra on prescription of $5 per pair for Laminex to the trade." What was Laminex at that time, or at this time?—A. Laminex was a new shatterproof construction that they applied to their lenses and was put out on prescription at that time. They controlled the price; it was their patented article.

Q. They told you a Soft-Lite Laminex would have to have an extra $5 per pair?—A. No; they were to charge $5 per pair for Laminex to the trade, and they would charge us $3 per

629 pair. That is a prescription item. One of the specialty items.

Q. And you had to charge $5 for it?—A. No; we charged $3. They give us that less 10 per cent. It is a special, the factory calls it, and we make either 10 or 20 per cent. We would raise the price if we wanted to, but the margin is already too low. For the wholesalers there is no room in there. Just a handling charge.

Q. Were you supposed to get $5 for it?—A. No; that is the price they set on prescription. This is their product, not ours.

Q. Were you getting any of the lenses?—A. They were making it on prescription at the factory, and it was a special, something new they had come out with.

Q. What did you pay for it?—A. They tell us they are going to charge us $3 less 10 per cent.

Q. And what did your wholesalers pay for it?—A. We probably charged them $3.

Q. And what would they charge the retailer?—A. From what it says, $5.

Q. You were required to do that?—A. No; we could have gotten more, but we did not see our way clear to do that. If the wholesalers pays $3 and gets $5, and he has some work to do on it. That was the prescription price to the retailer.

Q. Who set the price?—A. Bausch & Lomb, on their own
630 product. That is their product, Laminex. That is their trade name.

Mr. Seymour. It is apparent, your Honor, that this does not affect us at all.

Q. Was it a Soft-Lite Laminex?—A. Yes; that would be a Soft-Lite Laminex.

Q. Was it a rose-tinted Laminex lens?—A. Laminex is their white lens, their name. What they said was: When you make the Laminex in Soft-Lite they are going to get $5 on prescription. The prescription extra is $5. I think over the regular prescription we are going to charge you $3 less 10 per cent. We could charge anything we liked. I presume we charged $3 or maybe $3.50. It is one of those prescriptions used in—oh, one in many thousands. If we were to sell it ourselves we would price it as we found it should be priced.

By the Court:

Q. What does the word "extra" in that letter mean?—A. I do not know. It is perhaps above the regular prescription price for regular lenses. When they take it as a special job they do that, when they harden it, and if they harden in white they make it 6, or harden in another color.

Q. Then that is plus $5?—A. No; I think that is $5 above the regular. I would not normally concern myself with that, because it is one in several thousands.

631 Q. But I am trying to get the meaning of these words. Does the word "extra" mean $5 above a certain price, or that the charge is $5 for the item?—A. I am not sure of that.

Q. And what does "prescription" there mean, the price to the retailer or the price to the patient?—A. No; the prescription is always to the retailer.

Q. To the retailer?—A. Yes; to the retailer.

By Mr. Isseks:

Q. Isn't it a fact that Soft-Lite Laminex came in stock as well as prescription?—A. Subsequently, after they brought it out.

Q. I am talking about March, 1936.—A. I would not remember.

Q. I show you a reply to that letter, that it was in stock at that time and that you agreed to a stock price.

The Court. Do not argue with the witness, Mr. Isseks. If you want to confront him with a document, then confront him with it.

Mr. Isseks. I offer in evidence a letter dated March 13, 1936, from Mr. Landis to Mr. Koeth.

The Court. Any objection?

Mr. Seymour. This again concerns relations other than the relations between Bausch & Lomb and Soft-Lite, and
632 Therefore seems to be outside the issues of the case which your Honor has already ruled on.

The Court. Overruled.

Mr. Seymour. Exception.

(Marked "Government's Exhibit 124".)

Q. I show you Government's Exhibit 124 [handing to witness], and direct your attention to the second full paragraph, and ask you if it does not refresh your recollection that for some time prior thereto your company had Soft-Lite Laminex lens prices, both in stock and prescription?—A. May I see the form of the document?

The Court. Exhibit 121 [handing to witness].

The Witness. Yes, sir. Now what is your question?

Q. Is your "Yes, sir" in answer to my question?

A. No; I say I am ready.

The Court. Does that refresh your recollection?

The Witness. Yes, sir.

Q. What was the arrangement prior to March 10, 1936, with regard to the distribution by your company of Soft-Lite Laminex lenses?—A. May I explain it?

Q. Oh, sure. Answer the question.—A. All right. We had been getting the semifinished Laminex blanks, and we had been selling them, and had a prescription price on Soft-Lite Laminex, which is a new Bausch & Lomb product which they made in white and made for us in Soft-Lite. When we were re-
633 ferring to our new costs he put in there apparently that it was his understanding that the extra in Laminex for Soft-Lites on prescription, our price that we put in the wholesaler's prices to the retailer would be $5, and he would charge us $3 less 10 percent, on a specialty. Our letter there was a gentle reminder to him that we thanked him—in other words, for the suggestion. We realized that what he meant was the

cost to us would be $3 less 10 percent, but that we already had our selling prices established, and the prices would appear in the distributors' prices on prescription and stock. We were telling him in a nice way that it did not belong there.

Q. Isn't it a fact that in March 1936, Bausch & Lomb suggested no effort be made to push this Laminex product?—A. I do not know wheher they did that. As a matter of fact we sold very few of them. The product was in the experimental stage. We were fearful of putting it out because of a comeback.

Mr. Isseks. I offer in evidence a letter dated March 17, 1936, from the Bausch & Lomb Optical Company, apparently signed by Mr. Koeth, addressed to the witness.

The Court. Without objection it will be received.

(Maaked "Government's Exhibit 125.")

Mr. Isseks. I offer in evidence the reply to the last document, dated March 18, 1936, written to Mr. Koeth, signed ap-
634 parently by D. Steers on behalf of the Soft-Lite Lens Company.

The Court. Any objection?

Mr. Lehrich. No objection.

(Marked "Governments Exhibit 126".)

Mr. Isseks. I offer in evidence a letter dated March 21, 1936, addressed to Mr. A. D. Ashmore, Reading, Pennsylvania, signed by McIntyre, Magee & Brown.

Mr. Lehrich. Your Honor, before we get off the last subject, may I direct your attention to one thing. The price list which has been offered in evidence by Mr. Isseks——

The Court. Exhibit 123.

Mr. Lehrich. Yes. On page 5 it has Soft-Lite Laminex blanks. I call your attention to the fact they are listed in quantities rather than as an extra, and the suggestion from Mr. Koeth could not be carried out because that already had been printed.

The Court. Yes; I gathered as much from the letter Exhibit 126. In other words that it was too late to carry out the thought; the material had already gone to the printer and they had to abide by that.

Mr. Seymour. Counsel have offered this letter of March 21, 1938——

Mr. Isseks. I thought it was 1936.

The Court. No; it says 1938.

635 Mr. Isseks. Then I may have misread it. But I think they made a mistake, your Honor.

Mr. Seymour. 1936 is correct.

Mr. Isseks. Yes; a mistake was made in typing.

Mr. Seymour. But I fail to see the materiality of it, and I object to it as incompetent, irrelevant and immaterial.

Mr. ISSEKS. I call your Honor's attention to the third paragraph.

The COURT. It is not objected to on the ground that it has not been properly authenticated?

Mr. SEYMOUR. No.

The COURT. McIntyre, Magee & Brown I believe have already been identified as distributors?

Mr. ISSEKS. One of the affiliates; that is right.

The COURT. And a distributor.

Mr. ISSEKS. That is right.

The COURT. And who is Ashmore?

By Mr. ISSEKS:

Q. Ashmore is the branch manager of McIntyre, Magee & Brown, isn't he?—A. I believe he is.

The COURT. Written to one of their own personnel.

Mr. ISSEKS. That is right; to one of their branch managers.

The COURT. Then what is the materiality of it?

636 Mr. ISSEKS. To show that they maintained the prices from the wholesaler to the retailer as part of the policy. We have had testimony about that all day.

The COURT. And referring to the fact that there were no discounts.

Mr. ISSEKS. That is right.

Mr. LEHRICH. If your Honor please, this is nothing more than enclosing three copies of our price list and directing the branch manager's attention to the fact that they are to be sold according to the prices in the price list.

Mr. ISSEKS. That is all it is offered for. We say that is illegal.

Mr. LEHRICH. There is no dispute in this case about that.

Mr. ISSEKS. I want to show how it is done.

The COURT. I will allow it.

Mr. LEHRICH. I was talking about the process, not the fact that it was illegal.

Mr. ISSEKS. I understand that.

(Marked "Government's Exhibit 127".)

Q. Mr. Singer, didn't you sell Soft-Lites on a price range parallel with the ordinary Kryptok white bifocal?

Mr. SEYMOUR. I object to that as irrelevant and immaterial here. There is no issue about Kryptok in this

637 case.

The COURT. Kryptok, I take it, is a Bausch & Lomb product.

The WITNESS. No; it is a bifocal—the whole thing.

Mr. ISSEKS. It used to be Bausch & Lomb product, but I do not want to get into that. It is ancient history.

The COURT. Then restate the question.

Mr. SSSEKS. I will withdraw the question.

By Mr. ISSEKS:

Q. Isn't it a fact that your company's policy has been to sell a Soft-Lite single vision lens at a price parallel with white fused bifocals?—A. No.

Q. I beg your pardon?—A. No.

Q. I show you a photostatic copy of a letter——A. May I help you out, Mr. Isseks?

Q. No; you are not going to help me out.—A. You will need it.

The COURT. Let him go ahead in his own way.

The WITNESS. Fused bifocals are not single vision.

Q. No; I know what the fused bifocal is. I show you a copy of a letter marked "Confidential" that you wrote to Mr. Landis, dictated June 26th—that you wrote to Mr. Ramaker, I
637-A mean, dictated on June 26th, sent apparently on June 27th [handing to witness], and direct your attention to the top of the second page and ask you if it is not a fact that your policy has been to sell Soft-Lites on a price range on a parallel with white fused bifocals, single vision Soft-Lites?—A. The answer is no, without looking at it.

Q. You do not want to look at it?—A. I say the answer is no. That is not a policy. It could not be. The two lenses are entirely different.

638 Mr. ISSEKS. I offer the document in evidence your Honor, and then I am going to interrogate the witness.

Mr. LEHRICH. May I see it?

Mr. ISSEKS. You certainly may. It was written to Mr. Ramaker and I think you have a copy. It has a notation on the top, your Honor, which I assume accompanied the carbon copy which went to Mr. Landis, and if I am mistaken I can be corrected by counsel. It is "Dictated June 26, 1939," and there is another date underneath, "June 27, 1939."

Mr. LEHRICH. Mr. Isseks, what particular paragraph are you referring to?

Mr. ISSEKS. I told him the second page on the top.

The COURT. You don't want me to read all of it?

Mr. ISSEKS. No, sir; your Honor. As a matter of fact I am not interested in offering any part of it except the first full page and the paragraph on the top of the second page. The rest I am not interested in offering, but I do not know how I can separate the document unless they want to physically delete it and then I would have no objection.

Mr. SEYMOUR. I object to it as irrelevant and immaterial.

The COURT. Overruled.

639 (Marked "Government's Exhibit 128.")

Q. Now let me hold that in front of you, sir; and I direct your attention to the top of the second page, where you said "Ray and I, I might add, both wish to conform. We all agree, though, that after our policy has been in effect so many years, any sudden change might prove very costly. This has occurred to me since our conference, Ben. After all, Soft-Lite from a price range, is on a parallel with white fused bifocals." Does that refresh your recollection that your single vision Soft-Lite price range was on a parallel with white bifocals?—A. The sentence was not finished.

Q. All right. "Because the price range is so much higher than prevails on white single-vision lenses."—A. May I explain to you now?

Q. Yes, sir.—A. The question was whether or not we should have a new price on single pair: Apparently our price was entirely out of line with what the trade was paying, and we said "Yes; we would like to conform with trade practices providing it does not hurt our established policy." We said that whereas there is a change on single pair price, a raising of the single pair price, because of the advantage given on column prices, that affects normal lenses, because the price range is relatively at a lower figure. Soft-Lite single-vision lenses come closer to

640 the prices of ordinary fused white bifocals, and therefore there is not any need in changing the heading of the single pair price in Soft-Lite. That is the only variance. If you take Soft-Lite white bifocals and single-vision bifocals you will see there is no parallel. We are only referring to the pricing to the level of both products. White lenses sold at that level in single vision.

Q. All I am trying to find out is whether your single-vision Soft-Lite was on a range equal to white fused bifocals or a higher range than single vision.—A. Our Soft-Lite was more comparable in price range with white fused bifocals than it was with white single-vision lenses, and that is the reason we felt it was unnecessary for us to change the single pair column heading.

Q. Now you read the first page of this letter, did you not?—A. I glanced through it.

Q. I am sorry. You read the first page and see if it does not refresh your recollection as to other matters you discussed with Mr. Ramaker at the time you saw him some time in June 1939.—A. Yes, sir.

Q. What were the subject matters of discussion?—A. Apparently it says we covered a number of subjects, both in Rochester and New York.

641 Q. Relating to what?—A. Various things, and I think the letter speaks for itself, Mr. Isseks.

Q. You notice you have on the top a notation to Mr. Landis, "Ray, please destroy this copy after you have read it."—A. Yes, sir.

Q. What was the reason for that?

Mr. LEHRICH. I suggest you read the rest. That is an explanation.

Q. (Reading.) "Will have another one here on your return. You and I can discuss same at our coming conference."—A. Mr. Landis at that time was, I believe, on the Coast. I sent him a letter which discussed possible price changes and I certainly did not want him to carry that around and have it come in the hands of the trade as to coming prices, and so forth, and I said in substance. Don't bother bringing this back. Destroy it. We have a copy in our file for our coming discussion. That was the idea of the memorandum.

The COURT. As usual, the letter was not destroyed.

The WITNESS. Yes.

Mr. LEHRICH. That is the notation on the office copy. It is not necessarily the copy Mr. Landis had.

The WITNESS. No.

Mr. ISSEKS. I offer in evidence, your Honor, a letter dated

642 May 27, 1940, addressed to A. F. Schrader, Riggs Optical Company, signed R. G. Landis, with notation on the top, "Copy R. D. Wetmore."

Q. Who is Mr. Schrader?—A. Executive manager of the Riggs Optical Company.

Q. Who is Mr. Wetmore?—A. Mr. Wetmore is general manager and president.

Mr. SEYMOUR. I object to it as incompetent, irrelevant, and immaterial.

The COURT. Objection overruled.

Mr. SEYMOUR. Exception.

(Marked "Government's Exhibit 129.").

Mr. ISSEKS. I offer a letter dated June 4, 1940, from the same people, namely, from Mr. Landis to Mr. Schrader.

Mr. SEYMOUR. Same objection.

The COURT. This is an answer to a letter the original of which has not yet gone in?

Mr. ISSEKS. Yes. But we have not got the letter. Otherwise we would offer it. Maybe we have it, but I do not think we have.

Mr. LEHRICH. I have no objection.

The COURT. Mr. Seymour's objection will be overruled.

Mr. SEYMOUR. Exception.

(Marked "Government's Exhibit 130.")

643 Mr. ISSEKS. I then offer the reply from Mr. Schrader to Mr. Landis, dated June 6, 1940.

Mr. SEYMOUR. The same objection.

The COURT. Same disposition.

(Marked "Government's Exhibit 131.")

Mr. ISSEKS. I then offer the letter from Mr. Landis of June 10, 1940, to Mr. Schrader.

(Marked "Government's Exhibit 132.")

Mr. SEYMOUR. I do not know how many more there are of this series, but I would like to reserve objection as to all of them and I assume your Honor would make the same ruling. They seem to me irrelevant and immaterial. They seem to me to involve a question that we would rather reserve for future consideration.

The COURT. I think so. So far they seem to indicate a course of communication and correspondence relating to prices and price structures between Soft-Lite Lens Company and the Riggs Optical Company. Whether it is within the scope of the complaint in the sense of a violation of law or whether it is innocent correspondence I cannot pass on now.

Mr. SEYMOUR. I have my reservation of objection and it can be considered on our future motion to strike.

The COURT. Very good. That is right.

644 Mr. ISSEKS. I now offer letter of July 10, 1940, from Mr. Ramaker to Mr. Singer. That letter refers to a letter of July 8th from Mr. Singer to Mr. Ramaker. I will see if we have it, and if we have it I will offer it. We do not have it, but I would like to call for the production of the letter. It was written a little over a year ago. The last paragraph has nothing to do with this case.

The COURT. It is the second to the last sentence in the middle paragraph that you call to my attention.

Mr. ISSEKS. Yes, sir; both sentences, and the last one, too.

The COURT. Without objection, except Mr. Seymour's general objection, it will be received.

(Marked "Government's Exhibit 133.")

Mr. ISSEKS. Your Honor, I call for the production of the letter of July 8, 1940, from the witness to Mr. Ramaker. It seems to me a letter as recent as that ought to be available.

The COURT. There is no question but that it is not. Apparently it not in court. Is it available?

Mr. SEYMOUR. We have not at present any such letter and this is the first time it has been asked for as far as I know, but we will make a search for it.

The COURT. There are two places it might be; one, in the
645 files of the defendant Soft-Lite, and second, in the files of the defendant Bausch & Lomb, and between the two of them they ought to be able to produce a copy and we will give them full opportunity to do so.

Mr. LEHRICH. I might have a copy but we do not know at this minute.

The COURT. You will have a reasonable opportunity to furnish it.

Mr. ISSEKS. Next I offer Mr. Singer's answer to Mr. Ramaker's letter dated July 11, 1940. I would like to offer the actual original because I do not think the photostat anybody could read. They have seen it, and I offer the original, and your Honor can look at it.

The COURT. Is there any objection?

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 134.")

Mr. ISSEKS. I now offer in evidence Mr. Ramaker's reply dated July 12, 1940.

The COURT. Is there any objection?

Mr. LEHRICH. No objection, but I want to call your Honor's attention to the sixth line.

The COURT. Referring to the letter of July 12.

Mr. LEHRICH. Yes.

(Marked "Government's Exhibit 135.")

Mr. ISSEKS. I refer your Honor to the whole letter; the
646 matter of prescription prices. Now, I offer letter dated August 8, 1940, addressed to the witness, signed Riggs Optical Company, Roy D. Wetmore, special delivery, with copy to Dan Hubbell and to B. A. Ramaker.

Mr. SEYMOUR. This is on the same line and it is subject to the same continuing objection.

The COURT. I will allow it.

(Marked "Government's Exhibit 136.")

Mr. ISSEKS. There is a notation on the top, "Copy to Dan Hubbell."

Q. Dan Hubbell at that time was president of White-Haines, was he not?—A. Yes, sir.

Q. And the reference to B. A. Ramaker was the Mr. Ramaker who was——A. Sales manager of Bausch & Lomb.

Mr. ISSEKS. I now offer the reply to the last letter from Mr. Singer to Mr. Wetmore, dated August 9, 1940. I think the witness identified Mr. Wetmore as the executive head of Riggs.

The COURT. Is there any objection?

Mr. SEYMOUR. Subject to the same continuing objection.

The COURT. Yes. I will allow it.

(Marked "Government's Exhibit 137.")

647 Mr. ISSEKS. I offer letter dated August 15, 1940, to Mr. Landis from Mr. Wetmore.

(Marked "Government's Exhibit 138.")

Mr. ISSEKS. I offer interoffice communication addressed to H. J. Fletcher, by Riggs Optical Company, Midwest District Headquarters, R. A. McCloskey, District Manager, dated July 25, 1939, carbon copy to R. D. Wetmore and A. D. Schrader.

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 139.")

Mr. SEYMOUR. Subject, of course, to my continuing objection.

The COURT. Yes, Mr. Seymour.

(Short recess.)

Q. Mr. Singer, I understand that in 1938 Bausch & Lomb put out a lens which was not a white lens, called Ray-Ban?—A. Yes, sir.

Q. And your company had certain correspondence with representatives of Bausch & Lomb in connection with the Ray-Ban product?—A. Yes, sir.

Mr. ISSEKS. I offer in evidence, your Honor, a letter dated April 18, 1930, addressed to Mr. Koeth, signed Soft-Lite Lens Company, with a notation at the top.

The COURT. Mr. Koeth of Bausch & Lomb.

Mr. ISSEKS. It is addressed to the Astor Hotel, but I assume it is the same gentleman, F. J. Koeth.

648 The WITNESS. Yes.

Mr. SEYMOUR. This line, I suggest, is immaterial and I therefore object to it.

The COURT. On the ground that it does not apply to Soft-Lite?

Mr. SEYMOUR. Yes; has nothing to do with Soft-Lite, except that Ray-Ban was a tinted lens manufactured by Bausch & Lomb which was in competition with Soft-Lite.

The COURT. What is your thought on that, Mr. Isseks?

Mr. ISSEKS. I do not think your Honor can satisfactorily rule until you see the total correspondence which consists of three papers. We offer it as showing the close cooperation between Bausch & Lomb and Soft-Lite with respect to products supposed to be competitive.

The COURT. With Soft-Lite?

Mr. ISSEKS. Yes; and everything that is done between them is as an aid to promote Soft-Lite, and I am going to offer several documents from now on on different subject matters on the same theory.

The COURT. I will receive it.

Mr. LEHRICH. As to this line of evidence, this is where the objection of one counsel applies to the other.

649 The COURT. All right.

(Marked "Government's Exhibit 140.")

Mr. ISSEKS. I now offer letter dated April 27, 1938, addressed to Mr. Ramaker, signed Soft-Lite Lens Company, R. G. Landis, with regard to the same subject matter, Ray-Ban.

The COURT. Subject to the same objection and the same disposition, I will allow it.

(Marked "Government's Exhibit 141.")

Q. Mr. Singer, who is Elmer G. Robinson?—A. He is one of our salesmen.

Mr. ISSEKS. I offer in evidence, your Honor, letter dated June 3, 1938, addressed to Mr. Elmer G. Robinson, signed "Scott," apparently written by Mr. Scott Sterling, and with notations on the right hand side, on the copy given to us, which is a conformed copy, indicating the witness made certain notations and that Mr. Robinson made certain notations. I offer the document with all the notations thereon.

Mr. SEYMOUR. Of course there is a slightly different objection to the notations.

Mr. ISSEKS. Let me have the original then.

Mr. SEYMOUR. I do not object on the ground they are not authentic, but whatever might be the admissibility of the letter

650 against Bausch & Lomb, the notations were apparently made on Mr. Singer's copy in his office, and apparently not communicated.

Mr. ISSEKS. I offer them only on that basis.

The COURT. And as admissions by Mr. Singer for whatever bearing they may have on the case.

Mr. ISSEKS. Yes, your Honor.

Mr. SEYMOUR. But my general objection that the acts of Soft-Lite would not bind Bausch & Lomb goes as to this.

(Marked "Government's Exhibit 142.")

By Mr. ISSEKS:

Q. Mr. Singer, who is Mr. Williamson?—A. Mr. Williamson is the advertising or sales promotional manager of the Bausch & Lomb Optical Company.

651 Q. Now there is a reference here to affiliates of Bausch & Lomb. Did you on various occasions sit in at meetings with representatives of the affiliated companies?—A. I did.

Q. Can you tell us how frequently such meetings took place?—A. Well, I was not always invited.

Q. I am sorry, I meant to say the ones to which you were invited.—A. Oh, maybe two or three. I do not know how often they would meet.

Q. How often did you go? I am not worried about how often they met.—A. I would go—oh, maybe every second year. Then I would not sit in on all of it but part of it. Mostly the social.

Q. You did sit in the meetings some time in 1939, did you not?—A. I may have, Mr. Isseks. May I see that?

Q. I will show it to you. Do you remember a discussion regarding a Dispenso box, and the inadvisability of having such a box used by both companies?—A. If I may see that letter, I think that refers to a meeting we had of the wholesalers, at which an affiliate sat in and referring to a mailing piece, an advertising piece. I do not think it refers to an affiliate meeting at Rochester.

Q. What is a Dispenso box?—A. It is a box to put out cleaner cloth, so they keep the lenses clean.

652 Q. Was there some discussion in 1939 about your company putting out one such box and Bausch & Lomb putting out another one?—A. Very likely. If they copied something that we had and we were duplicating no charge, give-away items, they called it to our attention or we would call it to theirs, that it is wasteful.

Q. It is your idea that it is wasteful and competitive, rather than cooperative?—A. We say it is wasteful. In the sense that it serves no good sales purpose for them or for us. It would not be good if they copied ours, because it would be a mere waste of money. It is something we give away with every thousand or two thousand cleaner cloths.

Mr. Isseks. I offer in evidence a letter from the witness to Mr. Williamson, dated September 8, 1939. I said I would show it to the witness.

Mr. Lehrich. I object to this document, and I assume I will to several others that will follow on the same subject, on the ground that it now appears that it is competition on cleaner cloths and other advertising materials, which have nothing to do with lenses.

Q. The cleaner cloth relates to the lenses, doesn't it?—A. No; it is a give-away.

Mr. Lehrich. It is not a subject of this cause of action here.

The Court. It is offered to show the relationship between the parties. As added collaboration, I take it.

653 The Witness. Mr. Isseks, I think I was correct, it is our own meeting in New York with affiliates. Probably a local man sat in. It says affiliate company executives. We had meetings from time to time with the wholesalers and showed new promotional pieces. Now he probably said that is the same thing Bausch & Lomb get out, they are giving it away and you are giving it away, and it is a poor policy anyway to stick it on the wholesaler.

Q. You wrote this, anyway?—A. Yes; I wrote that.

(Marked "Government's Exhibit 143.")

Q. The last exhibit, 143, referred to the box in which the cleaner cloth comes?—A. Yes, sir.

Q. But you also put out the cleaner cloth?—A. Yes, sir.

Q. You give it a name, do you not?—A. Undoubtedly, a very high-falutin' name, to make it sound better; yes.

Q. What do you call your cleaner cloth? Take the year 1939.—A. I presume we call it the Soft-Lite DeLuxe Special, Best Cleaner Cloth.

Q. But always Soft-Lite cleaner cloth?—A. Always, if it was Soft-Lite cleaner cloth. If we put it out it was Soft-Lite cleaner cloth.

Q. You give it always to your licensees?—A. Yes, sir.

Q. You would not give it to anybody else?—A. No.

Q. Because you sell it at a very low price to them.—
654 A. Well, buyer and seller don't think alike on that. We think we do. I will say we sell it below cost.

Q. A price which does not allow for any reasonable commercial profit?—A. No; that is right.

Mr. Isseks. At this time I offer in evidence a letter from Mr. Williamson to the witness regarding the subject matter that I have just interrogated the witness about. The date is September 13, 1939, addressed to Mr. Singer, signed Bausch & Lomb, Milt, and in the lefthand corner "M. C. Williamson."

Mr. Seymour. I object to it along the same lines that Mr. Lehrich objected to the last one, as wholly immaterial and irrelevant to any issue in this case.

The Court. This is in the nature of advertising material.

Mr. Isseks. Yes, your Honor.

The Witness. Yes; that is what it all is.

The Court. I will allow it, and overrule your objection.

(Marked "Government's Exhibit 144.")

Mr. Isseks. Your Honor, I now offer a letter from Mr. Landis to Mr. Williamson, dated September 19, 1939. This relates to the subject matter of the last letter, and also relates to another subject matter which has heretofore been mentioned in the
655 testimony, namely, Soft-Lite Protection Certificates.

Mr. Seymour. The same objection, if your Honor please.

The Court. Overruled.

(Marked "Government's Exhibit 145.")

Mr. Isseks. Your Honor, I would like to call your attention to the last full paragraph on the first page, relating to the price level of the cloths. I also call your Honor's attention on the second page to the first full paragraph there, showing that the first time they used Soft-Lite protection certificates was on July 15,

1932. I ask counsel if they can produce or located a letter referred to in this Government's Exhibit 145, of September 15, 1939, from Mr. Williamson to Mr. Landis. We have not got it.

Q. Mr. Singer, was there a cabinet used by your company in connection with the distribution of its product?—A. Yes; a give-away.

Q. Don't you charge anything to the wholesaler or retailer for it?—A. If the retailer—it was a stock deal. If the retailer would purchase a quantity of lenses sufficient to cover what we felt was the cost of the cabinet to us, we gave it to him on an order. If a wholesaler felt that he had customers who liked the cabinet and would like to use it for all kinds of lenses, the
656 only stoppage we could put to it was to put a price on it. Then the wholesaler would buy it for his own use, if it was not for our use.

Mr. Isseks. Your Honor, I offer in evidence a letter dated January 3, 1940, to Mr. Landis from the Bausch & Lomb Optical Company, M. C. Williamson.

Mr. Seymour. This, too, it seems to me is immaterial and irrelevant to any issue in this case, and I object to it.

The Court. Again this is like advertising—promotional.

The Witness. Only, or solely.

The Court. I will allow it on that theory.

(Marked "Government's Exhibit 146.")

Q. Mr. Singer, do you have a subsidiary operating in Canada?—A. Yes, sir.

Q. What is the name of it?—A. Soft-Lite Lens Company, Limited.

Q. How long has that company been operating?—A. I imagine about half a dozen years.

Q. And the Bausch & Lomb Company have a Canadian subsidiary, do they not?—A. Yes.

Q. Called Bausch & Lomb Optical Company, Limited?—A. Yes.

Mr. Isseks. Your Honor, I offer in evidence a letter dated
657 December 4, 1936, addressed to the witness, signed Bausch & Lomb Optical Company, Limited, apparently by one L. E. Amsten.

Q. Who is Mr. Amsten, sir?—A. He is the manager of the Bausch & Lomb Optical Company, Limited, Canada.

Mr. Seymour. I object to this as wholly without the issues in the complaint, and as incompetent, irrelevant, and immaterial on the charge of conspiracy here involved. This is not unlike the question we had up on the first day of the trial, as to whether this complaint covers foreign commerce. Your Honor indicated you did not think it did. This relates to transactions abroad, in

Canada. There is no suggestion that any Canadian company is involved in this complaint.

The COURT. What about that, Mr. Isseks?

Mr. ISSEKS. Your Honor, it is to show the close relationship between these two companies, both wholly owned subsidiaries of both companies, and it shows their cooperation and their practices. We are not trying to prove a violation of law here for the purpose of getting an injunction against it.

The COURT. I understand.

Mr. ISSEKS. But solely to show their continuous and regular course of conduct.

The COURT. Of course, what foreign companies might do
658 would be admissible under their law, perhaps, but it would not be admissible under our law. Only what a domestic company does.

Mr. ISSEKS. I think I can bring out this matter by a question. I am talking about the fact that they get together here in this country, about lenses to be shipped up there.

Q. Your Soft-Lite lenses, where are they made or distributed in Canada?—A. Made in Rochester, New York.

Q. They are sent down here to you?—A. Yes.

Q. And you send them to your subsidiary up in Canada?—A. Yes.

Mr. ISSEKS. I submit that it shows a course of conduct with respect to a product manufactured in this country. We are talking about Soft-Lite lenses, and I am not talking about another crime.

The COURT. But this is from the Canadian company, addressed to this defendant, in which they say they would like a decision on a matter which will be helpful to them in determining what should happen in Canada. That being so, and assuming that would be unlawful in the United States, maybe it would or would not be unlawful in Canada.

Mr. ISSEKS. I am not offering it to show it is unlawful in Canada. We have not alleged a violation of foreign commerce under Section 1, which we could.

The COURT. Yes; but you haven't alleged it.

659 Mr. ISSEKS. No; we have not alleged it. We are offering it not to get an injunction, but to show the close cooperation in connection with all matters relating to Soft-Lite, no matter where it is. Here is a product that the witness says is made in Rochester and shipped down to New York. I think that relationship goes to the issues in this case. It may not have much weight.

The COURT. I think the weight is so small I will exclude it.

Mr. Isseks. I accept, your Honor, and I would like to make an offer of proof.

The Court. Mark it for identification.

(Marked "Government's Exhibit 147" for identification.)

Mr. Isseks. I would like to offer the reply as Exhibit 148. I understand your Honor's ruling is the same. It is a letter dated December 18, 1936, written by the witness.

The Court. Do not jump to that conclusion. It might be written by the defendant and might be an admission, and admissible under another rule.

Mr. Isseks. The other letter was written by a wholly owned subsidiary of the Bausch & Lomb Optical Company.

The Court. But a Canadian subsidiary.

Mr. Isseks. But wholly owned.

The Court. Yes; but I say a Canadian subsidiary might say things which would not be competent here.

660 Mr. Isseks. This shows that a meeting was held at Rochester, New York, your Honor. I think I can show who the directors are and show a complete unanimity of directorship.

The Court. I do not think it is very important here.

Mr. Isseks. I am interested in getting the evidence in if I can. This is dated December 18, 1936, written by the witness to the Bausch & Lomb Optical Company, Limited, Toronto, Ontario, Attention of L. M. Amsten.

The Court. Is there any particular part of this long letter that you want me to look at?

Mr. Isseks. No; it goes to the whole question of price policy in Canada. Your Honor will see that he says "as we do here in the United States."

Mr. Seymour. I think the same objection applies to it, if your Honor pleases.

The Court. Does it say what they do in Canada?

Mr. Isseks. It shows the nature of it. It says so, your Honor, I think. Well, it does not any more than generally.

The Court. It does not say what they do.

Mr. Isseks. It is along the line of the other document, and if your Honor disagrees with us on that you will probably on this. I think they are both admissible.

661 The Court. This is inadmissible on the ground that it does not contain anything which is relevant to the issues in the case.

Mr. Isseks. The second document, you mean?

The Court. Yes; regardless of it being Canadian or American. It just does not tell anything or contribute anything.

Mr. ISSEKS. It contributes this much, your Honor: it shows an effort here on the part of the defendant Soft-Lite and a wholly owned subsidiary of Bausch & Lomb to get together and continue a course of conduct elsewhere that they have been doing here in the United States. That is what it is offered for.

The COURT. I say the letter does not disclose what they have been doing in the United States, and what they did in Canada is not within the issues. So you do not get yourself any further along the road. I will exclude it. Mark it for identification.

(Marked "Government's Exhibit 148" for identification.)

The COURT. I indicated before that it might be admissible if he said in the United States they fix prices. It is the first part would make it admissible and not the second.

Mr. ISSEKS. Your Honor, there is a sentence here that practically says that.

662 The COURT. Call it to my attention.

Mr. ISSEKS. The third paragraph, first sentence.

The COURT. What sentence is it?

Mr. ISSEKS. It says they need a price setup and policy.

The COURT. Yes, they want to do in Canada exactly what they are doing in the United States.

Mr. ISSEKS. Exactly.

The COURT. That is not evidence of what they are doing in the United States.

Mr. ISSEKS. I think we disagree, but your Honor has ruled against the Government. Our theory is that we have shown what they have done in the United States.

The COURT. But this letter does not give me any evidence of that.

Mr. ISSEKS. I think we can show the course of conduct was continued as to other things elsewhere.

The COURT. That is immaterial.

Mr. ISSEKS. That is where we differ.

The COURT. Very well.

By Mr. ISSEKS:

Q. Mr. Singer, some time prior to 1929 did your company have a contractual relationship with the Continental Optical Company engaged in the manufacture and distribution of lenses?—A. We had an arrangement with them.

663 Q. Was it in writing?—A. I think so.

Mr. ISSEKS. If it was an agreement in writing, your Honor, we would like to have it, and I haven't got it here. I have not seen any.

The WITNESS. I did not say an agreement. I said an arrangement. It was selling glass. We told them what we would sell at.

Q. What was that arrangement?—A. We would sell them the glass at X dollars per pair, they would take the glass and make it into Ultex, and they would sell it to all their customers.

Q. Was there any arrangement with regard to the price at which they would sell?—A. No, I think they fixed their own price, because when we started doing business with them they had a patented product and they had full say on the price. The only time when price would come in would be when they wanted to buy for less.

Q. Wasn't there a discussion between you and the representatives of the Continental with regard to the price at which they would sell their Soft-Lite product as compared to your Soft-Lite product?

Mr. SEYMOUR. I object to the dealings, if any, between the Soft-Lite Company and Continental, which is not a party to this suit and not connected with any party to the suit; as incompetent, irrelevant, and immaterial.

664 The COURT. Does it involve the sale of Soft-Lite lenses?

Mr. ISSEKS. Yes, sir.

The COURT. I thought you said they sold a different lens.

Mr. ISSEKS. Soft-Lite lens with something added to it.

Q. What was it?—A. Ultex Soft-Lite. That was theirs. We sold them glass so they could make Ultex.

Mr. LEHRICH. They were special bifocals.

The WITNESS. That is right.

The COURT. I will overrule the objection.

Mr. SEYMOUR. May I have my objection noted to all of those, because I see that there are several more letters Mr. Isseks has.

Q. (Read by reporter.)—A. After the original sale to them, when Bausch & Lomb introduced the Orthogon Soft-Lite Ultex Bifocal, it was made in Soft-Lite as well, and we of course priced the Orthogon Soft-Lite Ultex Bifocal. Some question was brought up by Continental as regards the price at which they were selling their Soft-Lite Ultex without the Orthogon curve, and they felt the differential was not large enough in their favor to satisfy them. So naturally they wanted to buy the glass for less. so they could sell theirs for less. What happened I do not

665 recall. That must have been about ten years ago.

Q. Did he talk to you about it?—A. Yes.

Q. And did you tell him at what price he could sell his Ultex as compared to Bausch & Lomb, or Soft-Lite?—A. No; because he fixed his own prices. He might tell me what he would sell at in order to get a lower cost.

Q. You said in your answer "we of course priced the Orthogon Soft-Lite Ultex Bifocal."—A. Yes.

Q. What did you mean by that?—A. Exactly that. We put out prices out to the trade on Orthogon Soft-Lite Ultex prescription and stock, as we do on everything, but Continental put their own price on their Ultex Soft-Lite, because all we did with them was to sell them the glass. They manufactured it into the Ultex, and they sold it to their customers, many of whom we did not do business with. That was an arrangement made when they had a very fine list of wholesalers, and that list subsequently deteriorated, but we continued to sell them for quite a while.

Q. Did there come a time when you terminated your relationship with Continental?—A. Yes.

Q. When was that, sir?—A. I would say about three or four years ago.

Q. Maybe a little longer?—A. I would not think so. If you have any letter it will help me if you show it to me. I would
666 say three or four years ago. About '38, or something like that.

Q. Was there any discussion at any time between you and the representatives of Continental with regard to whether or not they could make any other kind of tinted lenses?—A. Yes.

Q. What was the conversation, and with whom?—A. Well, from time to time their representative or general manager would be asked whether or not it was true, as regards their selling a glass that looked like Soft-Lite and could be palmed off as Soft-Lite, in Ultex, and was sold in varying qualities. We were assured that that was not so. We learned subsequently that it was not only so, but some of the blanks, Utex blanks made from their imitative glass, were boxed in Soft-Lite Ultex boxes and sold as Soft-Lite Ultex. It was most confusing, detrimental to our best interests, and we told them so and discontinued doing business, and had them pay for the amount that we figured between us, for the damage we suffered in the number of blanks that we discovered that they had palmed off that way. I think it ran into some hundreds of dollars. And then we stopped doing business with them.

Q. In connection with your relationship with the Continental people, were there discussions about whether or not they could deal with the Bausch & Lomg distributors?—A. In one of
667 their letters they misused the word. They used "B. & L. Distributors" instead of Soft-Lite distributors. We did not go into that at the time, because we knew what they meant. They were dealing with Soft-Lite distributors and they used the expression "B. & L." That is the only case. They sold anybody they liked.

Q. Did you have them agree they could not sell to any Soft-Lite distributors?—A. No.

Q. I beg your pardon?—A. No; unless it was a second-quality lens. The great majority of their Soft-Lite Ultex were sold by them.

Q. By whom?—A. By Continental, to our wholesalers; and in addition they sold to the list that we did not do business with. We could not include that. Unless they tried to offer, as they may have when their type of offering deteriorated, something which included that "Same as" class to our wholesalers. They could do what they liked, of course, with their own rose tinted glass, sell it as they liked, but we did not want that old or second-quality Soft-Lite sold to a wholesaler who they might refer to, as I think in one letter, as "B. & L."

Q. They were not selling your Soft-Lite products?—A. Oh, yes.

Q. They were selling Ultex Soft-Lite?—A. Yes; made of our glass, and all of our customers.

668 Mr. ISSEKS. I offer in evidence a letter dated January 13, 1932, addressed to Mr. A. D. Hurst of the Continental Optical Company.

Q. Who is Mr. Hurst?—A. He is either the general manager or the president of the Continental Optical Company.

Mr. ISSEKS. It is signed by the witness.

Mr. SEYMOUR. I have an objection to all of these documents. The testimony now shows, it seems to me, that they are inadmissible as against the Bausch & Lomb defendants, whatever admissibility they may have as against Soft-Lite. I cannot see how it could even be claimed this was a step taken pursuant to the alleged conspiracy. So irrespective of the class of connection, the documents are immaterial, incompetent and irrelevant.

The COURT. I will receive it for the present.

(Marked "Government's Exhibit 149.")

Mr. ISSEKS. I have one more document, your Honor, on this subject matter, and I will go to another subject matter. I offer the reply to the last document, dated January 16, 1932, addressed to the witness, signed "Continental Optical Company, by A. D. Hurst."

Mr. SEYMOUR. The same objection.

The COURT. The same disposition.

(Marked "Government's Exhibit 150.")

Q. Mr. Singer, reference was made I think in the testimony, by you or perhaps by somebody else; with regard to

669 a Panoptik Soft-Lite.—A. Yes.

Q. That is also a patented bifocal?—A. That is; yes, sir.

Q. And it has Soft-Lite in it as well as Panoptik, whatever that is?—A. Well, Panoptik is the name used for the bifocal, a

special patented construction, and it is made in white, in Soft-Lite and in other tints.

Q. In 1934 did you have a conference with Mr. Ramaker and Mr. Landis and yourself with regard to the relationship between Panoptik lenses and Soft-Lite lenses?—A. Very likely.

Q. When used together?—A. Yes; very likely.

Mr. Isseks. I offer in evidence, your Honor, a memorandum dated 12/12/34, prepared by Mr. Landis, of such a conference. I offer it in evidence as an admission against the defendants, made by one of the parties to the case.

Mr. Seymour. It seems to me we have enough problems in this case without going into Panoptik. I object to documents bearing upon the Panoptik situation.

Mr. Isseks. It is not offered as bearing upon the Panoptik situation, but it is only offered on Soft-Lite. We are not trying the Panoptik case. We will try that before another judge, or if we are lucky perhaps before your Honor, but not here.

670 Mr. Seymour. It involves Panoptik, a patented product, and the questions involved in that connection may be quite different from those involved here.

The Court. Is there Soft-Lite glass in every Panoptik Soft-Lite lens?

Mr. Isseks. No, sir.

Mr. Seymour. Yes, there is.

Mr. Isseks. Oh, it is in every Panoptik Soft-Lite; yes.

The Court. So there is some connection involved in that situation.

Mr. Seymour. I think not, because the complaint is squarely limited to unpatented lenses.

The Court. And these are patented lenses?

Mr. Seymour. The Panoptik Soft-Lite is a patented lens.

The Court. This is mostly atmosphere, anyway. I will overrule the objection.

(Marked "Government's Exhibit 151.")

Q. I show you this memorandum, and there is a statement therein that you were a director of the Panoptik Company [handing to witness]. Does that refresh your recollection that you were a director of the Panoptik Company at or about the date indicated?

Mr. Seymour. What is the date that is mentioned?

670-A The Court. In December 1934.

Mr. Isseks. The question is whether it refreshes your recollection.

A. I should say from that that I was a director, but apparently nobody else knew it, because I never attended a meeting, and I did not realize I was, either.

(Adjourned to Wednesday, September 24, 1941, at 10:30 a. m.)

671 UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY ET AL.

NEW YORK, *September 24th, 1941—10:30 o'clock a. m.*

(Trial resumed.)

Mr. ISSEKS. Your Honor; the Government would like to call a witness out of turn, Mr. Barnes. It will take but a few minutes. He comes from up-State New York.

The COURT. There is no objection, I assume.

CLARE BARNES, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. GLICKFELD:

Mr. Barnes, where do you reside?—A. Dunkirk, New York.

Q. And are you in business there?—A. I am.

Q. What is the nature of that business?—A. Optical business.

Q. Retail?—A. Yes, sir.

Q. And how long have you been in that business?—A. I have been in that business a good many years. In Dunkirk I am on my eleventh year.

Q. Are you a registered optometrist?—A. I am.

672 Q. Do you know Mr. George Ramaker of the Soft-Lite Lens Company?—A. I have met him.

Q. Have you ever been a Soft-Lite licensee?—A. I have.

Q. And do you recall when you became a licensee?—A. I cannot state the exact date, but I have handled Soft-Lite lenses for a good many years. I think the first I handled was when I was associated with Adam-Meldrum in the year 1927.

Q. Do you recall when you first met Mr. Ramaker?—A. I do.

Q. When was that?—A. I think that was about 1937 or 1938. I am not sure which.

Q. And do you remember where you met him?—A. In the De-Wein Optical Company, Buffalo, New York.

Q. And did you have a conversation with him at that time?—A. I did.

Q. Will you please relate the substance of that conversation?

Mr. SEYMOUR. I do not suppose I need to reserve again my objection because this is a new witness.

The COURT. This is a conversation with an officer of your client.

Mr. SEYMOUR. No, your Honor. George Ramaker is an
673 employee of the Soft-Lite Lens Company, so I assume that my objection continues to this line without repeating it again.

The COURT. Yes. Is there another Mr. Ramaker?

Mr. GLICKFELD. There is.

The COURT. I confused the two for a moment. Thank you for reminding me.

Q. Will you give us the substance of that conversation?—A. I was introduced to him either by Mr. DeWein or his assistant, whose name is Charlie. It is a German name and I could never remember it, but I have known him for a good many years. I always called him Charlie, and Mr. Ramaker said, "There has been some complaint that you are not maintaining prices on Soft-Lite."

Q. And did you have any response to that?—A. I said I used my judgment in that respect. Some people are not able to pay a high price for glasses and I do not have any stated price on any glasses because some of them I fit free of charge for those that are needy.

Q. And did Mr. Ramaker have anything to say to that?—A. Yes, he said, "You would lose your license if you do not maintain our established prices."

Q. And what did you say?—A. I said, "I will take my chances on that," or something to that effect. I could not give the exact words.

Q. Was anything else said at that time?—A. I do not
674 think there was.

Q. Did you ever speak with Mr. Ramaker again about that same subject?—A. I did.

Q. And when was that?—A. It was on a subsequent call that he made to my office on May 25, 1939.

Q. And can you recall the substance of the conversation which took place at that tme?—A. I do.

Q. And will you give it to us, please?—A. I was in my refracting room examining a patient's eyes. I heard someone come into my waiting room. I noticed that they were about to enter my refraction room.

Q. You mean the person who had been coming through your waiting room?—A. Yes. I stepped over to the refracting room door and said, "Do you want to see me?" He handed me his card and said "I am with the Soft-Lite Lens Company and we are maintaining and establishing prices throughout the United States on Soft-Lite." I handed the card back to him. I said, "I will be busy from twenty minutes to half an hour. You can have a chair or come in a little later." Shall I continue?

Q. Yes, please.—A. He said "What price are you getting for Soft-Lite lenses?" I said "Different prices, depending upon the prescription." He said, "What do you mean, different prices depending upon the prescription? You are going to lose your license."

Mr. LEHRICH. Up to now, your Honor, we have not identified the representative he is talking with.

675 Mr. GLICKFELD. I understood the witness to testify that he had subsequently spoken to Mr. Ramaker, and he was now giving the conversation with Mr. Ramaker.

The COURT. I did not so understand. Was it Mr. Ramaker to whom you were speaking?

The WITNESS. Yes sir. George W. Ramaker.

Q. Will you continue with your recollection of the conversation, please?—A. I said—Will the stenographer read the last part of that. He broke in on me there.

(The reporter read the answer of the witness.)

The WITNESS. I said, "You are a nuisance, get out of here."

Q. Was anything else said at that time by either one of you?—A. There was.

Q. What was it?—A. I took him by the—he says, "I do not have to; I don't have to." I grabbed his left arm with my right hand and urged him towards the door. Then he called me a son of a bitch and struck me on the face. I retaliated with my left hand, putting him through the door; and then with right hand, he was entirely out of my office and waiting room. Now then he said more. Then he said, after he picked himself up from the hotel lobby, he says, "I am sorry." I then kicked his brief case out into the lobby, and that was—he did not come back any more that day.

Q. Did you ever see him subsequently?—A. I have not.

676 (Government's Exhibit 152 marked for identification.)

Q. Mr. BARNES, I show you Government's Exhibit marked for identification 152, which purports to be a letter dated June 19, 1939, written by the Soft-Lite Lens Company, directed to you. Did you receive that letter [handing to witness]? It is a photostat of the original.—A. Will you read this last part? It is not clear for me.

Q. I will show you the original [handing to witness].—A. It is pretty much mussed over there.

Q. Just answer yes or no, whether you received that?—A. I did. That is from my files.

Mr. GLICKFELD. I now offer Government's Exhibit 152 in evidence, your Honor.

The COURT. Did you get this communication from Mr. Ramaker?

The WITNESS. Yes, sir; I did.

The COURT. I understand there is no objection, other than the general objection. It is received.

(Government's Exhibit 152 for identification marked in evidence.)

Mr. GLICKFELD. I should like to offer in evidence, without marking it for identification, the Soft-Lite office card of Dr. Barnes. No more questions of this witness, your Honor.

The COURT. Is that word there "impossible"?

677 Mr. GLICKFELD. I think it says "impossible", your Honor.

The COURT. Without objection it will be received.

(Marked "Government's Exhibit 153.")

Cross-examination by Mr. LEHRICH:

Q. How long were you a Soft-Lite licensee, sir?—A. I could not state the exact time. The records I think will show that.

Q. Approximately how many years?—A. I handled Soft-Lite lenses a considerable number of years.

Q. Con you approximate the date when you were appointed a licensee?—A. I believe it was by the firm of King & Eisele, when I was associated with Adam, Meldrum & Anderson Company, of New York.

Q. You were a licensee for a number of years prior to this altercation with Mr. Ramaker, weren't you?—A. I understood that I was. They have been filling my prescriptions on Soft-Lite without any questions.

Q. In 1939 for the first time Mr. Ramaker talked to you about prices prevailing in Dunkirk?—A. No, not in 1939. I think that I must have met him in '38. Now it may have been early in 1939, but I cannot state the exact date.

Q. And he asked you at that time what prices you were getting for Soft-Lites?—A. No, he said there had been a complaint that I was not getting the minimum price on

678 Soft-Lites.

Q. During all the period that you were purchasing Soft-Lite lenses did you ever receive a price list or other communication from Soft-Lite telling you what prices to charge to the consumer?—A. I was told that by the jobber.

Q. Did you ever get a written price list or a written communication of any kind telling you what prices to charge for Soft-Lite lenses in your business?—A. I don't recall that I did, from Soft-Lite, but I got it from their representative, the jobber.

Q. You got a written price list from their representative?—A. Verbally.

Q. And some jobber told you that you ought to charge a certain price for Soft-Lites?—A. Yes, sir.

Q. And then you used your own judgment?—A. Yes, sir.

Q. And continued to charge what you thought you could get from your consumer, from your patient?—A. What I thought was right.

Q. And after the Soft-Lite representative called on you the first time, in '38 I think you said——A. He did not call on me.

Q. Oh, he met you——A. In Buffalo.

Q. And he told you at that time, you say, that you ought to charge a minimum price for Soft-Lite lenses?—A. He said
679 that I should maintain a minimum price.

Q. And you told him you would use your own judgment?—A. I did.

Q. And you remained a licensee up to '39 after that conversation, didn't you?—A. I did.

Q. And you were removed after you and George Ramaker got into a fist fight?—A. That is right.

Q. Now you wrote a letter to Soft-Lite Lens Company complaining about George Ramaker?—A. I did.

Q. Is this the letter you wrote [handing to witness]?

Mr. ISSEKS. No objection. We stipulate it is the letter, your Honor, if it is dated June 1939.

Mr. LEHRICH. June 28, 1939.

Mr. ISSEKS. June 28, 1939. There is no dispute about it.

A. That is my signature.

The COURT. It has not been offered yet.

Mr. LEHRICH. I offer it in evidence.

(Marked "Defendants' Exhibit H.")

Q. Since you were removed as a Soft-Lite licensee you have continued to supply your patients with rose-tinted lenses, haven't you?—A. With tinted lenses.

Q. You had no trouble getting them?—A. I said with tinted lenses. I am using Titmus.

Q. Titmus Velvet-Lites?—A. Yes. I also use Cruxite.
680 Q. That is a rose-tinted lens, isn't it?—A. No, I would not say that it was.

Q. Well, pink-tinted?—A. Well, no, it is a little slightly on the smoke, just slightly. Except the Cruxite A—I mean Cruxite AX, is just a little resembling the Soft-Lite.

Q. And you use all of those lenses in your business?—A. At different times.

Q. And you have no trouble getting them?—A. No, I do not have any trouble getting them from the American Optical Company.

Mr. LEHRICH. That is all.

681 The COURT. Is there any redirect?

Mr. GLICKFELD. Yes. I would like to offer in evidence, without marking for identification, a hand-written letter dated

July, I think it is 17th, 1939, written by George Ramaker to Mr. Ray Landis.

(Marked "Government's Exhibit 154.")

Mr. GLICKFELD. I have no further questions, your Honor.

Mr. LEHRICH. No further questions.

Mr. ISSEKS. Your Honor, before we proceed with the examination of Mr. Singer, when Mr. Ramel was on the stand there was a statement made by him, or by me, I forget which, regarding Barnett & Ramel's regular first-quality price list as of 1933. Mr. Ramel has turned over to us what he states was the price list in effect from some period in 1931 until the end of 1933 on all Soft-Lite first quality products as part of a long booklet. I have no objection to offering the entire document, subject to any correction that either side may want to make as to dates. On pages 18, 19, 21, 22 and 23, there are references to various different kinds of lenses including Soft-Lite. I will show it to counsel and would like to offer it.

Mr. LEHRICH. I think we ought to have a reasonable opportunity to look at it.

682 Mr. ISSEKS. Oh, sure. I have no objection. Suppose we mark it for identification now and I will offer it later.

The COURT. Very well. It will be marked for identification.

Mr. ISSEKS. I only offer for this purpose pages 18, 19, 21, 22, and 23, on each of which pages there are references to Soft-Lite.

(Marked "Government's Exhibit 155" for identification.)

Mr. ISSEKS. I will turn it over to counsel for the defendants so they can examine it at their leisure.

NATHANIEL SINGER, resumed the stand.

Direct examination continued by Mr. ISSEKS:

Q. Mr. Singer, when we recessed on Friday, you were offered Government's Exhibit 151, a memorandum by Mr. Landis referring to a conversation which you and he had with Mr. Ramaker. Will you be good enough to read it——

The COURT. Which Mr. Ramaker?

Mr. ISSEKS. I am sorry. It is my fault.

The COURT. I am assuming you are referring to the Bausch & Lomb Ramaker.

Mr. ISSEKS. Yes, sir; Ben Ramaker.

Q. (Continuing.) And I ask you to read it, Mr. Singer, and see if the memorandum sets forth substantially what transpired at the conference?—A. Yes, I remember.

683 Q. Does the memorandum set forth substantially what took place?—A. I think so.

Mr. ISSEKS. I now offer in evidence, your Honor, letter dated April 17, 1937, addressed to the witness, signed Bausch & Lomb Optical Company, B. Ramaker.

Mr. SEYMOUR. If your Honor please, this and the previous exhibit, relate largely to questions affecting Panoptik, and I have already pointed out, and I think counsel and the Court agree, that issue is not directly involved here.

The COURT. I have observed that. It is only relevant to the extent of its relationship to Soft-Lite.

Mr. ISSEKS. I thought your Honor ruled on that the other day.

The COURT. Yes.

Mr. ISSEKS. And I am offering all these documents for that limited purpose. There will be a series of six or seven of them.

(Marked "Government's Exhibit 156.")

Mr. ISSEKS. I now offer the reply from Mr. Singer to Bausch & Lomb Optical Company, attention Mr. Ramaker, dated April 19, 1937.

(Marked "Government's Exhibit 157.")

Mr. ISSEKS. I now offer Mr. Ramaker's reply to Mr. Singer, dated April 27, 1937.

684 (Marked "Government's Exhibit 158.")

Mr. ISSEKS. I now offer further communication on the same subject dated May 24, 1937, from Mr. Ramaker to Mr. Singer, which itself refers to Government's Exhibit 157.

(Marked "Government's Exhibit 159.")

Mr. ISSEKS. Your Honor, I have not been asking the witness whether he received or sent these communications because I have been acting on the basis of understanding we have with counsel that there is no dispute about authenticity or the truth of the matter stated therein. I now offer letter from the witness to Bausch & Lomb, attention Mr. B. A. Ramaker, dated May 27, 1937, on the same subject matter.

(Marked "Government's Exhibit 160.")

Mr. SEYMOUR. With respect to this exhibit, I object to it as incompetent, irrelevant and immaterial. I do not raise any question about its being a copy, but I object because this adverts to an alleged agreement between the witness and Panoptik Company. It squarely involves, it seems to me, the Panoptik Company, and there is no issue here bearing on any question in this case.

The COURT. Overruled.

Mr. ISSEKS. I would like to point out, your Honor, that
685 counsel has stipulated that Panoptik Company is a wholly owned subsidiary, and the evidence shows Mr. Ramaker was a director of Panoptik and the witness was at one time.

The COURT. I am glad to have your comment on that, but that is not the basis upon which I overrule the objection.

Mr. ISSEKS. I now offer a letter on the same subject matter, two years later, September 12, 1939, addressed to the witness, signed Bausch & Lomb Optical Company, B. A. Ramaker—the signature is "Ben" or "BAR" but apparently written by Mr. Ramaker as indicated in the lower lefthand corner.

(Marked "Government's Exhibit 161.")

Mr. ISSEKS. I offer in evidence another document relating to the same subject matter, dated October 18, 1939, addressed to the witness, signed Bausch & Lomb Optical Company, B. A. Ramaker.

(Marked "Government's Exhibit 162.")

Q. Mr. Singer, are you familiar with the fact that Bausch & Lomb puts out a Nokrome lens?—A. Yes, sir.

Q. And you are familiar with the fact that Bausch & Lomb has licensed Titmus Optical Company in connection with the manufacture of such lens?—A. I have heard something on that order.

686 Mr. SEYMOUR. If your Honor please, I object to this line. This squarely involves the operation of another patented system. Nokrome is a patented lens controlled by Bausch & Lomb. What it did with its licensees leads us into a wholly new field, and while it is true that Nokrome Soft-Lites were made and discussions on that subject might, under your Honor's earlier ruling, be received subject to connection, I object to the inquiry into the license system because it will lead us so far afield from any issue in this case.

The COURT. I am inclined to agree we ought not to do what you say is threatened. Of course I cannot foretell that the threat will materialize, but I will indicate that I would like to have the examination limited to the effect of the distribution of Soft-Lites. I have already ruled, I think, that this includes Soft-Lites in any form, whether Panoptik or Nokrome or goggles, or any other shapes.

Mr. ISSEKS. I do not want to encumber the record any more than I have to, so I think I will cut the thing short by offering a document which will raise the issue.

I now offer in evidence a license agreement dated January 26, 1940, between Bausch & Lomb Optical Company, signed by M. H. Eisenhart, President, and Titmus Optical Company by E. H. Titmus as President. It is offered, your Honor, for the purpose of showing the provisions of paragraph 4 of the agreements. I do not want to read it.

687 Mr. ISSEKS. I think your Honor may want to read it. That is the easiest way of doing it. Paragraph 4 states exactly what we offer it for.

The COURT. Before an objection is made let me read it. Who is the licensee, Titmus or Bausch & Lomb?

Mr. Isseks. Titmus. Bausch & Lomb is the licensor. I want to point out, your Honor, that we are not seeking to cancel this contract in this case. We are seeking to show the prices determined by Soft-Lite are prices that must be fixed by other people. I will ask the witness a few questions, but I think the document is self-explanatory.

The Court. I will hear Mr. Seymour.

Mr. Seymour. If your Honor please, I object to this as irrelevant and immaterial, and not bearing on any issue in this case. The receipt of it would require a consideration of the patent rights. What this document shows is a license by Bausch & Lomb to Titmus which is in no way involved in this case. It is a competitor of Soft-Lite. This was a glass-making patent. Titmus said they wanted to get the right to use this patent. Bausch & Lomb were selling Soft-Lites. Bausch & Lomb was interested in not having the Soft-Lite market destroyed because it would have lost its profit on the sale. It said in this license agreement
688 that they would give them a license under their glass patent but would not let them destroy the Soft-Lite market, which would be the effect of not making any restriction on the price. That is common and customary.

The Court. But these are covenants on the part of the licensor. This says that the licensor will not prescribe minimum prices in excess of the lowest price at which the licensor's corresponding lenses are sold, provided further that the prices and terms prescribed by the licensor to the wholesale trade shall include the prices and terms at which the patented lenses or lens blanks are sold to the wholesale trade.

Mr. Seymour. But the first sentence, your Honor, contains the agreement to which I referred. That is, the licensor has always exacted from the licensee an agreement not to destroy the product in which the licensor continues to be interested.

The Court. I do not need any argument on that, but I would like you to address your argument, if you have any, to that portion of Paragraph 4 which makes the Soft-Lite prices a part of the system of distribution of these Nokromes.

Mr. Lehrich. I think I can answer that, your Honor.

The Court. You do not have to explain it as a matter of
689 law. I want you to tell me why it is not relevant to the issues of this case.

Mr. Lehrich. Here is a patent license by Bausch & Lomb to this company and saying to the other company that they must sell at the same prices Bausch & Lomb does. That is perfectly legal under the patent licenses. To fix that standard Bausch & Lomb says: "Our prices to the wholesalers shall prevail as the prices you will charge; however, our prices to Soft-Lite shall

not be considered in such prices." Because Bausch & Lomb's price to us is not the wholesale price, for the reason that there is no element of sales, advertising and all the other costs of merchandising involved. But to get a standard on the rose tint, they say the price which Soft-Lite has to its wholesalers shall be considered such wholesale price. That is all that means. Just that on the white lenses it is our price to the wholesalers of Bausch & Lomb, on the tints it is Soft-Lite's price. It is a question whether they can do that under the patents.

The COURT. I do not care whether Bausch & Lomb has a right to do it under its patents, but it is evidence that Bausch & Lomb regards that price as a part of its economic system?

Mr. ISSEKS. That is all I am offering it for.

690 Mr. SEYMOUR. It regards the possibility of Titmus taking its patent and getting out at a price which would destroy the Soft-Lite market, as one in which it has an economic interest.

The COURT. Is it relevant to this case?

Mr. SEYMOUR. It seems to me not, because it does not involve the issues in this case but patent Office rights.

Mr. ISSEKS. We are not seeking to cancel the contract, your Honor.

The COURT. I understand. Is there much more on this?

Mr. ISSEKS. One piece of paper.

The COURT. I will overrule the objection.

Mr. LEHRICH. Exception.

Mr. SEYMOUR. Exception. Your Honor in so ruling I assume will not preclude me on a motion to strike.

The COURT. Of course not. You must understand that in ruling now I must get all the possibilities that may develop in the situation; whereas when you move to strike you will have the whole record before you and be in a better position to judge the relevancy and materiality.

(Marked "Government's Exhibit 163.")

Mr. ISSEKS. I am not going to offer the agreement with another company—Shuron.

The COURT. Then you need not tell us about it.

691 Mr. ISSEKS. I am going to offer in evidence a letter which accompanies it and has the same provisions. I would like to have counsel for Bausch & Lomb stipulate that on November 17, 1937, Bausch & Lomb and Shuron Optical Company entered into a license agreement with regard to Nokrome patents. If they will stipulate that, they will save the necessity of putting in the actual agreement.

Mr. SEYMOUR. Subject to correction I am prepared to stipulate that—and subject to my objection as to relevancy and materiality.

The COURT. Of course.

Mr. Isseks. Then I would like to offer a letter signed by the Shuron Optical Company, Inc., John W. Collinson, on the same day, addressed to Bausch & Lomb Optical Company, which related to the same subject matter as the last Government exhibit.

The Court. Same objection I suppose, and there will be the same disposition.

(Marked "Government's Exhibit 164.")

By Mr. Isseks:

Q. Mr. Singer, you recall several days ago there was some testimony with regard to Soft-Lite lenses being distributed abroad in the year 1938. Do you recall that?

Mr. Lehrich. I think there is an unanswered question,
692 isn't there, as to whether or not he knew about that Titmus agreement?

Mr. Isseks. That is certainly a surprise to me.

The Court. Mr. Lehrich says he thinks there is an unanswered question on the record.

Q. Did you have anything to do with the Titmus agreement?—A. Not at the time; no.

Q. Did you have any conversations with the Bausch & Lomb people regarding it?—A. No.

Q. Referring back now to an answer to my question about distribution of Soft-Lite lenses abroad, you went to Europe in 1938, did you not?—A. Yes.

Q. And talked to various people in Great Britain regarding the distribution of Soft-Lite lenses?—A. Yes.

Q. Before you went there to discuss it with those people did you have conversations with the Bausch & Lomb people?—A. Yes, sir.

Q. Where was that?—A. I presume at Rochester.

Q. With whom?—A. If it concerned export it would be with Gus Husson primarily. He might bring others in, but he is the one I talked export prices with.

Q. What did they say to you, sir, and what did you say to them?—A. If I recall, it was at the time that the Crookers went downhill in England. It was being offered in half-crown price
693 variety, that is 50 cents, complete, and there was a golden opportunity for Soft-Lite to find a real place in the British market. We advised Bausch & Lomb that we would like very much to get as low a price as we can for the glass, and we would like to have it in such forms as manufacturers in Great Britain could utilize to best advantage, which is different from the form in which we purchase it for the domestic market, and that we hoped to develop a very substantial sale for Soft-Lite lenses in Great Britain, and whereas the lenses would be manu-

factured in Great Britain, there would be a substantial sale for Bausch & Lomb at Rochester for raw glass.

Q. What did they say to you, the Bausch & Lomb people?—A. O. K.

Mr. SEYMOUR. Your Honor will recall this is along the line that your Honor ruled was not within the complaint, in so far as it related to foreign commerce, and I preserve my objection. Perhaps it is difficult to be sure before the witness answers what it concerns, so I would like to reserve the right to move to strike it as not within the charge of the complaint.

The COURT. Very well.

Mr. ISSEKS. I think the witness's answer was O. K. At this time, your Honor, I would like to offer only one paragraph of the minutes of the special meeting of the board of directors of Soft-Lite Lens Company, dated June 8, 1939. If there is any
694 objection to the offer of only that one paragraph, I have no objection to the whole minutes going in. I am trying to save space. I was going to ask after your Honor reads it that the stenographer just take it into the minutes.

Mr. SEYMOUR. If your Honor pleases, I object to a part, as incomplete, and to all of it as immaterial.

Mr. ISSEKS. I offer it all.

Mr. SEYMOUR. As immaterial to any issue in the case. It does not contradict anything the witness said. The witness has testified to the conversation. All it does is refer to a discussion about various general problems. I think if your Honor sees it you will see that it has nothing to do with the case.

Mr. ISSEKS. In view of counsel's statement I offer the entire document rather than the excerpt.

The COURT. What is the part to which you refer?

Mr. ISSEKS. The second page, and I think it is the second full paragraph, or the third. It refers to the witness going to Rochester.

Mr. SEYMOUR. I call your Honor's attention also to the fact that plainly the whole document relates to foreign commerce and is not within the issues in this case.

695 The COURT. I will sustain the objection. I do not see that it is material to the issues.

Mr. ISSEKS. I think, your Honor, there are two paragraphs——

The COURT. I read the paragraphs you called my attention to.

Mr. ISSEKS. Well, certainly it elaborates on what the witness has testified to with regard to the conversations he had with Bausch & Lomb and these are minutes made at the time and contemporaneous, and rather than the testimony now, which is after the litigation has started, I thought this would be better evidence.

The COURT. It does not add to anything that I can see of material benefit to either the plaintiff or defendants in this suit. It is a very general discussion about foreign transactions and even if it were domestic transactions, it is so general in character that it does not really help very much at this stage of the proceeding.

Mr. ISSEKS. All right, sir.

Q. Mr. Singer, I show you Government's Exhibit 37, which is a Soft-Lite stock price list, that is, a price list of Soft-Lite stock licensees, and ask you whether that price list is in effect today. It is dated January 2, 1940.

696 Mr. LEHRICH. We have a later one.

Mr. ISSEKS. If you have a later one, I would like to offer it.

The COURT. Do you want to consult with your office, Mr. Singer?

The WITNESS. Thanks. Yes; I would like to.

The COURT. Let him come up and sit in the jury box right next to you if necessary.

Mr. LEHRICH. You have one of August 26, 1940.

Mr. ISSEKS. Let us have it and we will put it in. I have not got it.

The COURT. You want in the record the latest price list of the Soft-Lite Company?

Mr. ISSEKS. That is right. I have been shown a document which says "Price list to stock Soft-Lite licensees," and I understand counsel's statement is that this is the latest price list from the wholesalers to the stock Soft-Lite licensees, dated August 26, 1940.

The COURT. Without objection it will be received.

Mr. LEHRICH. Except the comment from the wholesalers. It is the Soft-Lite price list to stock licensees, showing the prices they are expected to pay the wholesalers.

697 Mr. ISSEKS. Very well.

(Marked "Government's Exhibit 165.")

Mr. ISSEKS. As I understand, that includes single vision and bifocal, does it not, Mr. Lehrich?

Mr. LEHRICH. Yes.

Mr. ISSEKS. I now offer in evidence what I understand to be the current price list from Soft-Lite Lens Company to distributors of single vision lenses, and if I am misinformed I would like to be corrected, your Honor. It is dated April 1, 1941, and it was given to us with a note on the top, but I do not know whether the note means anything.

Mr. LEHRICH. That is the only change between that and the one of January 1940. There is one item changed between January 2d

and April 1st. If you want to offer it without the note I have one that has no note on it.

Mr. Isseks. Fine. I will take the one without the note and while the clerk is marking it I would like to have the current price list from Soft-Lite Lens Company to distributors on bifocals. That one is single vision as I read it.

(Marked "Government's Exhibit 166.")

Mr. Lehrich. I understand that would have to be a com-
698 posite list. We do not have any complete list of that kind. We have an old list and we issue bulletins from time to time.

Mr. Isseks. I want to know what they are.

The Court. They operate on an advance sheet basis.

Mr. Isseks. I wonder if counsel would be kind enough to furnish us with a document or documents which set forth what the price lists are on bifocals?

Mr. Lehrich. I will be glad to have one of those later.

Mr. Isseks. Thank you very much. The Government intends to offer it as an exhibit and if we rest before that time we will reserve a number, or I will reserve a number now.

The Court. If you say it is a single document we will deem it marked "Exhibit 167", and we will assign that number to the document when it arrives. That is a bifocal price list?

Mr. Isseks. Soft-Lite wholesalers price list on bifocals.

(To be marked "Government's Exhibit 167".)

Mr. Lehrich. Do you mean to the wholesalers from Soft-Lite, like that distributors' list?

Mr. Isseks. That is what I mean.

699 Mr. Lehrich. Because you put the word "stock" in. I don't know what you mean by that.

Mr. Isseks. It is the stock lens, I understand. It is not prescription.

Mr. Lehrich. You want the price list from us to the distributors?

Mr. Isseks. That is right. I now offer a document which is designated "Prescription price list. April 1, 1941. Soft-Lite Lens Company," and I would like to ascertain by stipulation whether this is the current prescription price list—single vision.

Mr. Lehrich. That is correct.

(Marked "Government's Exhibit 168".)

Mr. Isseks. I also offer as the next Government's Exhibit a Document which has in the upper left hand corner, "4-1-41," entitled "Soft-Lite Prescription Price List. Soft-Lite Fulvue Bifocals," and I would like to ascertain whether there is any other bifocal prescription price list other than the one that I am now offering in the next Government's Exhibit?

Mr. LEHRICH. There will be another composite list.

Mr. ISSEKS. Counsel tells me on the balance of the bifocals there is a document in 1936 and another one in 1940, plus the one I have just offered, dated 4-1-41, and I would like to
700 reserve a number for that price list if I may.

The COURT. In other words, you are not offering the document you just tendered?

Mr. ISSEKS. I will offer that because apparently that is complete in itself.

Mr. LEHRICH. No; that covers only one bifocal, a Fulvue bifocal, and there is another list for "D" bifocals.

The COURT. Why don't you annex this little document to the missing documents and put them in all as one exhibit, Exhibit 169?

Mr. ISSEKS. Thank you very much. We will do that.

(To be marked "Government's Exhibit 169".)

Q. Now, Mr. Singer, you have already testified that Bausch & Lomb manufactured the blanks for you?—A. Yes, sir.

Q. When the product comes from Bausch & Lomb, is it in more than one form? A. Oh, yes.

Q. Will you tell us what forms they are in?—A. Finished, semifinished, uncut, single-vision and bifocal lenses, in a large variety of foci and shades—four shades; semi-finished rough toric cylinders——

Mr. LEHRICH. May I suggest that we have a mounted exhibit showing these various things which I think would be helpful to the Court.

701 Mr. ISSEKS. Sure. I have no objection. I wish I had known about it.

Mr. LEHRICH. We have them here and I was going to show them to the witness.

The COURT. If he has them mounted and there is no dispute about it——

Mr. ISSEKS. Oh, no; I am trying to have the Court educated and educate myself. I have no objection at all. I am trying to find out what the facts are. May I proceed in the meantime?

The COURT. If you are not going to use that exhibit you may go ahead. I am still going to hold you to your schedule, you know.

Mr. ISSEKS. I am trying hard, your Honor.

Q. When these blanks come from Bausch & Lomb to your company, you send them out to the wholesaler, do you not?—A. Lens and lens blanks?

Q. Both.—A. Yes.

Q. Blanks, molded blanks?—A. We will show you the variety in a minute. It is very extensive.

Q. And then when they go to the wholesaler what does he do to those blanks after he gets a prescription for them?—A. We sell primarily uncut lenses rather than blanks—uncut.

Q. Let us take an uncut lens. What does he do with it when he gets the prescription?—A. If he has a prescrip-
702 tion for that uncut lens, if the prescription calls for an uncut lens, he sends it out as is.

Q. And he does something, doesn't he?—A. No; just packs it and mails it and bills for it. If the prescription calls for an edged lens or for some other form of labor to be put onto the lens, he does the necessary labor, edging or mounting, or both, and sends it out and bills for it.

Q. This is uncut?—A. Yes.

Q. Now take semifinished.—A. He uses that semifinished lens blank when he does not have the desired focus in the uncut form in stock; he finishes the second side in order to make the desired prescription, and then sends it out in uncut, edged or finished mounted form.

Q. Now suppose it is a blank, a molded blank?—A. Then he does the same work, but on both sides.

Q. Do you have any figures in mind as to the quantity of Soft-Lite lenses that are sent by your company, Soft-Lite Lens Company, to the distributor in the three different forms, uncut, semifinished and molded blanks?—A. I would say uncut would be about—single-vision we are talking about?

Q. Yes.—A. Because the bifocals are not made in the uncut form.

Q. Well, take the single-vision first.—A. On the single
703 vision about—tell me, would you like it if I got the complete figures?

Q. Sure, if you have them.—A. We will get them for you.

Q. Have you them here?—A. We will get them for you.

Q. How long will it take?—A. We will have them for you after the recess.

Q. And give the same figures for bifocals.—A. You mean semifinished and rough?

Q. Yes.—A. They all have to be worked by the wholesaler unless he sells them in blank form.

The Court. I think a schedule of that character would be more helpful.

Mr. Isseks. Certainly it would, your Honor.

Q. Now have you any recollection of the average price at which your company sells a single-vision lens?—A. I can give you that information.

Q. To the wholesaler.—A. We can give you that information.

Q. Also bifocals?—A. Yes.

Q. And you have heard testimony, have you not, with regard to the price at which the retailer charges the purchasing public for Soft-Lite lenses, single-vision and bifocals?—A. No; we have not had any testimony on that.

Q. There is a price, is there not?—A. Not that I know of.

704 Q. Don't they sell them at all?—A. Sure.

Q. But they sell them at varying prices?—A. That is correct.

Q. And you have a provision in both the stock license and the prescription license that the retailer——

Mr. SEYMOUR. I object to that. The document is in evidence and speaks for itself.

The COURT. Do you want to make a memorandum of the material you are asking him to produce?

Mr. ISSEKS. I assume counsel is doing it.

Mr. LEHRICH. I think I have it, your Honor. I would rather that the witness make a memorandum, too.

Mr. ISSEKS. The record will show it, your Honor.

Q. Mr. Singer, I show you Government's Exhibit 45, which I believe it has been stipulated is the current Soft-Lite stock license, and direct your attention to paragraph 1 with regard to prices prevailing in the locality in which licensee conducts his practice or business.—A. Yes; that is correct.

Q. That subject matter has been one of interest to your company at least since 1933, has it not?—A. Yes.

Q. And that license is still in effect?—A. Yes.

Q. And a similar provision is in Exhibit 57, which has been stipulated as the current prescription license, paragraph 1?—A. Yes.

705 Q. So you are familiar, are you not, in general with prevailing prices from the stock licensee or the prescription licensee to the public?—A. No.

Q. You are not even generally familiar with them?—A. What do you mean by "generally"?

Q. Is it more than the price that you charge to the wholesaler?—A. Oh, sure.

Q. Is it more than the price at which you put in the list the wholesaler should charge to the retailer?—A. I will tell you what I understand.

Q. That is right?—A. It is $2, $3, or $4 more than the retailer generally gets for white lenses.

Q. What is the ratio of the price charged by the retailer to the public as compared to what you charge to the wholesaler?—A. I have no idea.

Q. No approximation even?—A. I will tell you why. In the same city the prevailing prices for Meniscus lenses down on Grand Street is—you and I talked about that—$3.50, and uptown where you get better service and lots more, maybe $5. Down on Delancey Street they get $2.50 for Meniscus. Now that same retailer will add $2 for tint, any tint, $3 or $4. How can you get the relationship?

Q. I believe you read into the record the first day your sales for the year 1940 as $987,000?—A. Yes, sir.

706 Q. The prices of those same sales to the public are some amount substantially larger than $987,000?—A. Oh, yes.

Q. Five times as much?—A. Now you are asking me to guess. You are a better guesser.

Q. No; you are in the business.

The COURT. The witness has testified it is impossible for him to ascertain the fact. If you want to make a calculation on the basis of the evidence already in the record, your brief is a very proper place to do that.

Mr. ISSEKS. Thank you very much. I thought we could get some testimony on it.

The COURT. Apparently he is not going to give it.

The WITNESS. I do not know.

The COURT. He says he does not know.

Mr. ISSEKS. Now I offer letter dated October 12, 1936, written by L. I. Withington, Bausch & Lomb Optical Company, Chicago office, to Mr. Landis.

The COURT. Is there any objection?

Mr. LEHRICH. No objection.

(Marked "Government's Exhibit 170".)

Mr. ISSEKS. I offer as the next Government's exhibit, let-

707 ter dated November 2, 1939, signed Bausch & Lomb Optical Company, B. A. Ramaker, addressed to Mr. Landis, and marked "Confidential."

The COURT. Without objection it will be received.

(Marked "Government's Exhibit 171.")

Mr. ISSEKS. I offer letter dated November 7, 1935, written by Mr. Landis to A. D. Hurst, Continental Optical Company.

Mr. SEYMOUR. I reserve objection to all these matters involving dealings between Soft-Lite and Continental Company, which were gone into at the close on Friday. I would like to have the reserved objection to this continuation of that line.

The COURT. Very well.

Mr. ISSEKS. The purpose of offering that letter and the next document is to show the wholesale system was referred to as a licensing system. There have been some other documents, your Honor, but we are just adding some more.

(Marked "Government's Exhibit 172.")

Mr. Isseks. The next letter is dated March 18, 1935, addressed to Bushwick Optical Company, signed Soft-Lite Lens Company, R. G. Landis. I have the original here which I would rather offer your Honor.

708 Mr. Lehrich. I object to this letter, if your Honor pleases. It obviously has nothing to do with the issues in this case.

The Court. He is putting it in, I suppose, because he says it is limited to the phrase "only by wholesalers who are duly licensed by it." That is the sense in which he puts it in.

Mr. Isseks. That is right, your Honor.

(Marked "Government's Exhibit 173.")

Mr. Isseks. I offer letter dated April 7, 1938, addressed to Bausch & Lomb Optical Company, signed Soft-Lite Lens Company, A. F. Immig.

Mr. Seymour. Of course, if your Honor please, part of my objection to this line is that the characterization of the system, which is obviously inaccurate from the other evidence in this case, by the Soft-Lite Lens Company, is certainly not binding on Bausch & Lomb.

The Court. It is certainly binding on Soft-Lite and may be binding on Bausch & Lomb, or may not be binding on Bausch & Lomb to the extent it can be explained.

Mr. Seymour. But it is part of my objection specifically that it is not binding, such a characterization by Soft-Lite.

The Court. Very well.

(Marked "Government's Exhibit 174.")

708–A Mr. Isseks. I offer as Government's Exhibit 175 a letter dated April 15, 1938, adressed to Mr. Ramaker, signed by Mr. Landis, and it indicates on the top that a copy went to Mr. Singer.

(Marked "Government's Exhibit 175.")

709 Mr. Isseks. I offer the letter dated November 14, 1938, addressed to Bausch & Lomb Optical Company, from Soft-Lite Lens Company, A. F. Immig.

The Court. And I suppose it deals with the same subject.

Mr. Isseks. Yes, your Honor.

(Marked "Government's Exhibit 176.")

Mr. Isseks. The next one deals with the same subject. It is dated November 15, 1938, addressed to Soft-Lite Lens Company, signed Bausch & Lomb Optical Company, A. D. Buedingen.

(Marked "Government's Exhibit 177.")

Mr. Isseks. I offer as the next Government exhibit, on another subject matter—a different company, but relating generally to the refusal to do business—a letter dated March 22, 1940, addressed to Mr. Landis, signed "Dan," but obviously written by Mr. Hubbell.

because in the lower left-hand corner are the initials "DDH," and it is on the stationery of The White-Haines Optical Company.

(Marked "Government's Exhibit 178.")

(Short recess.)

Mr. ISSEKS. I offer a memorandum of Soft-Lite Lens Company with regard to Vision, Inc., in Houston, Texas. There is no date on it, your Honor, except the date when they became a li-
710 censee and the date they were taken off. I will offer all of these with one number and then letters thereafter.

The COURT. Is this a series?

Mr. ISSEKS. Yes, sir; a series.

Mr. SEYMOUR. I have the same objection to these as I had to the earlier ones, which your Honor overruled. I assume that it may apply to all of them.

The COURT. These are from the files of the Soft-Lite Company?

Mr. ISSEKS. Yes, your Honor.

The COURT. They are the office records of cancellations of various licensees?

Mr. ISSEKS. Yes. It shows the date they became licensee and the date they were taken off.

The COURT. With sometimes a statement of the reason.

Mr. ISSEKS. That is right, your Honor.

The COURT. The one that you have just called to my attention is marked "Cutting Prices."

Mr. ISSEKS. That is right, your Honor.

Mr. SEYMOUR. And we say that that representation by Soft-Lite is not binding on the defendant Bausch & Lomb.

(Marked "Government's Exhibit 179.")

Mr. ISSEKS. I offer as the next one a letter, a similar company record, with regard to Reliable Eyeglass Shop,
711 Washington, D. C.

(Marked "Government's Exhibit 179-A.")

Mr. ISSEKS. I offer a similar company record with regard to E. B. Stevenson, North Baltimore, Ohio.

(Marked "Government's Exhibit 179–B.")

Mr. ISSEKS. I offer a similar company record with regard to Dr. F. B. Fellman, New Orleans, Louisiana.

(Marked "Government's Exhibit 179–C.")

Mr. ISSEKS. I offer in evidence a similar company record with regard to George Gruenwald, New Orleans, Louisiana.

(Marked "Government's Exhibit 179–D.")

Mr. ISSEKS. I offer a similar company record with regard to Cohen, M. L., Sons, Inc., Minneapolis, Minnesota.

(Marked "Government's Exhibit 179–E.")

Mr. ISSEKS. I offer in evidence a similar company record with regard to E. Lukinovich, New Orleans, Louisiana.

(Marked "Government's Exhibit 179–F.")

Mr. ISSEKS. I offer a similar company record with regard to George B. Wisden, Springfield, Ohio.

(Marked "Government's Exhibit 179–G.")

Mr. ISSEKS. I offer in evidence a similar company record with regard to Edmund E. Schulte, Detroit, Michigan.

(Marked "Government's Exhibit 179–H.")

712 The COURT. I want to ask a question as to Exhibit 179–H. I note across the face of it is the word "Cancelled." Does that mean that this card is cancelled, or that the license is cancelled?

Mr. ISSEKS. I do not know, your Honor. I will ask the witness if he knows. Or I will take a stipulation from counsel if they know. Mr. Lehrich could tell us, I think.

Mr. LEHRICH. I would say that means the license was cancelled, your Honor; because these came in the group of revocations.

Mr. ISSEKS. I offer in evidence a similar company record with regard to Fred W. Powers, Ashland, Kentucky.

(Marked "Government's Exhibit 179–I.")

Mr. ISSEKS. I offer in evidence a similar company record with regard to L. A. Fleisch, New Orleans, Louisiana.

(Marked "Government's Exhibit 179–J.")

Mr. ISSEKS. I offer in evidence a similar company record with regard to Dr. Stanley Hymes, San Diego, California.

(Marked "Government's Exhibit 179–K.")

Mr. ISSEKS. I offer in evidence a similar company record with regard to William Breit, Oakland, California.

(Marked Government's Exhibit 179–L.")

713 Mr. ISSEKS. I offer in evidence a similar company record with regard to Dr. J. Nyrin, Los Angeles, California.

(Marked "Government's Exhibit 179–M.")

Mr. ISSEKS. That is the last in that series, your Honor. I offer a letter dated May 4, 1939, as Government's Exhibit 180, addressed to Mr. A. J. Noughton, Riggs Optical Company, from Soft-Lite Lens Company, R. G. Landis.

The COURT. This is the policing?

Mr. ISSEKS. Yes, your Honor.

The COURT. Without objection it will be received.

(Marked "Government's Exhibit 180".)

Mr. ISSEKS. I offer as Government's Exhibit 181 a letter dated January 7, 1938, addressed to the Soft-Lite Lens Company by McIntyre, Magee & Brown, apparently signed by W. H. Ingram.

(Marked "Government's Exhibit 181.")

Mr. SEYMOUR. I assume with regard to the last exhibit and this one, if your Honor please, that counsel is offering them merely to show the activities of Soft-Lite in its dealings with wholesalers with regard to particular matters. Your Honor will recall that at an earlier stage there were some letters to affiliates, and your Honor indicated you were receiving
714 them for that particular purpose and not taking into account any affiliation at that stage. I assume there is the same basis for the admission of these letters.

The COURT. I have so far not taken into account the affiliation, but I have taken them regardless of the affiliation.

Mr. ISSEKS. Your Honor has in mind that the Government says that the affiliation becomes important at the end of the case and that we are offering them for all purposes.

The COURT. I understand that.

Mr. ISSEKS. We do not offer them for any limited purpose. Your Honor, the next group of four relate to another subject matter, namely, removing the licensee and then putting him on after he ceases the practice? I offer one of four letters, the first one, dated November 21, 1939, addressed to Mr. Landis, signed Riggs Optical Company, A. R. Schrader.

(Marked "Government's Exhibit 182.")

Mr. ISSEKS. I offer the reply as Government's Exhibit 183, dated November 28, 1939, to Mr. Schrader, from Soft-Lite Lens Company, R. G. Landis.

(Marked "Government's Exhibit 183.")

715 Mr. SEYMOUR. We are getting to be innocent bystanders as to some of these exhibits. We do not see them before they are marked, and I think we ought to.

Mr. ISSEKS. No doubt of that.

The COURT. I thought you had copies of all this material.

Mr. SEYMOUR. We have copies of some of it, but not all.

The COURT. Then speak up when that happens. We are dealing with a mass of exhibits, and I do not think counsel intends to put in anything you have not seen.

Mr. ISSEKS. I next offer, as Government's Exhibit 184, a letter dated February 14, 1940, addressed to Mr. Schrader, from the Soft-Lite Lens Company, with regard to the same subject matter.

(Marked "Government's Exhibit 184.")

Mr. ISSEKS. I offer in evidence the reply, dated February 21, 1940, to Mr. Landis, signed Riggs Optical Company, A. R. Schrader.

Marked "Government's Exhibit 185.")

Mr. ISSEKS. I now go to another subject matter, your Honor. I offer in evidence a memorandum addressed to H. J. Fletcher,

Denver, signed Riggs Optical Company, M. Onsgard, dated March 5, 1940.

The COURT. Who is Mr. Fletcher?

The WITNESS. Riggs's manager in Denver.

716 (Marked "Government's Exhibit 186.")

Mr. ISSEKS. I offer a letter dated March 29, 1940, addressed to Mr. Roy Landis, Soft-Lite Lens Company, signed Riggs Optical Company, apparently by W. L. Wood.

(Marked "Government's Exhibit 187.")

Mr. ISSEKS. I offer in evidence a letter dated July 19, 1940, addressed to Mr. R. G. Landis, signed Southeastern Optical Company, Inc., by W. S. G. We do not know his full name.

(Marked "Government's Exhibit 188.")

Mr. ISSEKS. We offer in evidence a letter dated October 23, 1940, addressed to Mr. Landis, signed by Colonial Optical Company, apparently written by one Mr. Snell.

(Marked "Government's Exhibit 189.")

Mr. ISSEKS. I go to another group of documents relating to another account. I offer a letter dated March 4, 1938, addressed to Mr. B. A. Ramaker, Bausch & Lomb Optical Company, signed Soft-Lite Lens Company, R. G. Landis, with a notation thereon apparently written by Mr. Ramaker.

(Marked "Government's Exhibit 190.")

Mr. ISSEKS. I offer an interoffice communication from Frame Sales Department to Chicago Office, attention Mr. L. I. Withington, apparently an interoffice communication from the

717 Bausch & Lomb Optical Company, as indicated by a printed item in the lower right-hand corner. It relates to the same subject matter as the last exhibit and is dated March 21, 1938.

The COURT. An interoffice communication of what company?

Mr. ISSEKS. Bausch & Lomb, apparently, your Honor, as shown in the lower right-hand corner.

Mr. LEHRICH. This has nothing to do with Soft-Lite lenses.

Mr. ISSEKS. They are all part of a series, your Honor. You see the dates are in close continuity. On the previous exhibit there is a notation by Mr. Ramaker to Mr. Moody: "Platt: Did we reinstate? B. A. R."

You notice the nexe one is a request by Mr. Moody to Mr. Withington regarding the same company.

The COURT. Roddy, Kuhl, and Ackerman.

Mr. ISSEKS. That is right.

The COURT. I will let it in.

(Marked "Government's Exhibit 191.")

Mr. Isseks. I offer another letter in connection with the same account, a letter dated March 24, 1938, addresed to Mr. B. A.

Ramaker, Bausch & Lomb Optical Company, signed Soft-Lite Lens Company.

(Marked "Government's Exhibit 192.")

718 Mr. Isseks. I next offer the last document in this series, a letter dated March 29, 1938, adressed to Mr. R. G. Landis, Bausch & Lomb Optical Company, G. P. Moody.

(Marked "Government's Exhibit 193.")

Mr. Isseks. If there is any further correspondence on this account, your Honor, showing that the account was reinstated, we would like to have it, but we have not any further correspondence.

By Mr. Isseks:

Q. Mr. Singer, did I understand you to say before that you did not know or did not have any interest in the prices at which the retailer sold the lenses to the purchasing public?—A. I did not say that.

The Court. He said he did have an interest.

The Witness. Sure.

Q. Isn't it a fact that your company requested the retailer to charge a certain amount over and above white lenses?—A. No.

Q. See if I can refresh your recollection. I will offer some documents, and I will show them to you.

Mr. Isseks. I offer in evidence a letter of September 5, 1939, written to Soft-Lite Lens Company, signed O. D. Mandt, I think it is, your Honor, although this copy which has been furnished us by the defendant Soft-Lite Lens Company is not clear.

719 The next letter indicates it is M-a-n-d-t.

The Court. Do you want to show that to the witness?

Mr. Isseks. I will mark the five documents and then show him the whole five.

The Court. They are being marked for identification, I take it.

Mr. Isseks. I am going to offer them in evidence before I get through. This letter was sent to Mr. Schrader——

Mr. Lehrich. Mr. Isseks, will you wait just a minute while we read this and see what it is.

Mr. Isseks. Yes.

Mr. Seymour. I have my continuing objection, your Honor.

Mr. Lehrich. I object to this letter as a letter from an optometrist to Soft-Lite Lens Company telling us what somebody else does. Certainly it is not binding upon us.

Mr. Isseks. Wait until you see the reply, your Honor.

The Court. Overruled.

(Marked "Government's Exhibit 194.")

Mr. ISSEKS. I offer in evidence a letter dated Septem-
720 ber 12, 1939, written to Dr. Mandt, signed Soft-Lite Lens Company by Mr. Landis, with a carbon copy to A. R. Schrader.

(Marked "Government's Exhibit 195.")

Mr. ISSEKS. I offer in evidence a letter to Mr. Schrader signed by Mr. Landis, dated September 12, 1939.

(Marked "Government's Exhibit 196.")

Mr. SEYMOUR. I assume that the ruling on the limited receipt applies to all of these letters of an employee of the Riggs Optical Company.

The COURT. I do not want to be misunderstood. I say I am receiving them as relevant regardless of the fact of affiliation or nonaffiliation.

Mr. SEYMOUR. But I understood when the matter first came up that your Honor took it as a similar line of correspondence, that is, correspondence between Soft-Lite and an affiliated wholesaler, with respect to the cancellation of a license. Your Honor eindicated at that time it was admissible aside from the question of affiliation.

The COURT. That is right.

Mr. SEYMOUR. Therefore the question of affiliation would be reserved, and when they were offered as evidence bearing particularly on activities of affiliates we would be heard.

The COURT. That is right.

721 Mr. SEYMOUR. And that applies to these letters as well.

The COURT. That is right.

Mr. ISSEKS. I now offer, as Government's Exhibit 197 an intercompany memorandum dated 9/14/39.

The COURT. Of which company?

Mr. ISSEKS. Of the Riggs Optical Company. Addressed to Andy Rosulek, signed Riggs Optical Company, A. R. Schrader.

(Marked "Government's Exhibit 197.")

Mr. ISSEKS. I offer the last document in this series, an intercompany memorandum dated 10/6/39, addressed to Mr. Rosulek by Mr. Schrader.

(Marked "Government's Exhibit 198.")

The COURT. Is Exhibit 198 the last of the series?

Mr. ISSEKS. I believe so, your Honor.

The COURT. But it does not show any final disposition.

Mr. ISSEKS. That is one of the things on which that is all we have. If there is any further information on it we would like to have counsel——

The COURT. You may ask them before you are through what was done about that license.

Mr. ISSEKS. That is right.

By Mr. ISSEKS.

Q. Mr. Singer, I show you Government's Exhibits 194,
722 195, 196, 197, and 198 [handing to witness], and ask you first to read them. You have read them, haven't you?—A. Yes, sir.

Q. Was it the policy of your company to require the prescription licenses to sell Soft-Lite lenses at a price $3 more than regular lenses?—A. No.

Q. Wasn't it the policy of your company to police the licensees to see that they maintained such prices?—A. We did not police.

Q. Isn't it a fact that your company in its stock price lists and prescription price lists in 1931 advised the retailer that his income from the use of Soft-Lite lenses would be more substantial and protected?—A. If I may see it. It sounds right.

Q. (Handing paper to witness.) I direct your attention to the stock price list of Soft-Lite lenses, Orthogon and Toric, August 1, 1931, item on the advertising page to which I point right here [indicating].—A. Yes.

Q. In other words, you put in that advertising "Soft-Lite lenses are universally used," then you have various reasons; then you say, "Because the practitioner's income from the use of Soft-Lite lenses is more substantial and protected."—A. That is right.

Q. This is a retailer.—A. That is right.

Q. How was his income protected if it was not through a
722-A requirement that the retailer sell at a certain price to the public?—A. Oh, it is very easily explained. We selected the type of retailers who were to sell Soft-Lite lenses. We did not cater to those who depended upon shoddy merchandising to attract business. He was not forced constantly to have to protect his position on whatever price he got for his services, which included the glasses, when he was selling Soft-Lites, because we did not cater to that type of practitioner.

723 Q. How was your retailers' income from the use of Soft-Lite lenses made more substantial and protected if it was not through a price policy of the retailer to the public?—A. You perhaps are including the two words in one thought, and that was not intended. It is more substantial because the retailer selling Soft-Lite lenses is selling a higher cost unit and his dollar profit is higher than it would be on a white lens. He is protected against "schlag" merchandising on the part of other retailers in the territory because we do not cater to them.

Q. How is his income protected, because it says that the practitioner's income is protected?—A. Now, you are talking about only some of the words. Read the whole thing.

Q. You read it there. I read that word for word every time.—A. I know, but I wrote it.

Q. All right, because you have not explained how his income is protected.—A. I told you the practitioner's income from the use of Soft-Lite lenses is more substantial. At the same time——

Q. There is no period there.—A. Well, the "and" says there are two thoughts, not as closely connected as you would like to, but in actual usage substantial in that when you sell white lenses you make X dollars per pair and when you sell Soft-Lite lenses
724 you make X plus Y dollars per pair, whatever that may be, so that your dollar profit is greater. Keep in mind we are talking about a practitioner.

Q. A retailer.—A. A practitioner, refractionist.

Q. A retailer who is a stock licensee.—A. But it does not make any difference. The same language probably appeared in both.

Q. There is no doubt about that. I have it here. A. That is part of our advertising slogan and halo. I assure you there is no question whether stock or prescription. The price is made for both, only one refers to the stock dealer and the other refers to the retail dealer. That is our advertising talk, Look, as a practitioner, as a professional man, you can make more when you sell Soft-Lite because you get more and the dollar profit is greater, and you are not put in a position of competing with a bad advertiser and "schlag" artists, who, by innuendo, buy other people's lines and put you on the spot, so that as we said to the retailers time and time again, Look, regardless of what you get for your product today, if you are selling a product that the cheap artist also sells, and sells at high price and low price and intermediate price, you are always put in competition with that type. Our practitioner is very much in the position of a dentist or a doctor who must guard his reputation zealously if his income
725 in the future is to be as substantial as at present. He tries to keep away from the nonethical, we call it, professional man, whether dentist or doctor or lawyer, if you please. He likes our policy because we appreciate the fact that is the type we like to do business with.

Q. That is your answer as to how the practitioner's income was protected or is protected?—A. Oh, you are leaving out words.

Q. You read it with a "period" after "substantial"?—A. No; only in my conversation. I wanted to break it up and make it simpler.

Q. Isn't it a fact that you meant when you wrote here that the practitioner's income would be protected——A. His practice is protected. His professional and practitioner income is protected. If we were only interested in income why would we have the practice of the practitioner selling and the dispenser, too?

Q. But one gets a stock license and one gets a prescription license?—A. In other words, dispensers may be both. We are talking about the professional man.

Q. You say the practitioner's income from the use of Soft-Lite lenses is more substantial and protected?—A. And protected, that is right. The practitioner's income. You cannot divide the two as the professional man's income which, if you please, Mr.
726 Isseks, is not based just on the price he maintains. It is based on the services he renders. We don't throw him into competition with the shoddy commercial merchandizers. That is the reason he likes our product and policy. That is our policy.

Q. Have you given any other reason how you are going to protect his income?—A. We cannot do that. It is dependent on the quality and the type of materials he uses and services he renders.

Q. Was your policy from 1931 to date similar to the policy indicated in this price list?—A. Our policies from the time we started doing business.

Mr. Isseks. I am sorry, your Honor. I will ask your Honor to direct the witness to answer.

The Court. Yes.

Q. Has your policy been the same since you wrote this bit of advertising in 1931?—A. Yes, sir.

Q. And when you wrote that bit of advertising you were not trying to fool them, were you?—A. Fool them? No. We meant it.

Mr. Isseks. That is all I wanted to know. No further questions of this witness.

The Court. Is there any cross? Or are you going to reserve your cross-examination?

Mr. Seymour. Before we pass to that question, counsel
727 for the Government said if there was any more material on the Roddy matter as to which he has offered a series of letters, he would like to put them in. I call his attention to the fact that he has copies of other material and if he wants to offer them, this might be a good time to do it.

The Court. Mr. Isseks, the witness says he has the information you wanted this forenoon.

Mr. Isseks. Fine.

The Witness. I will read it to you.

Mr. Isseks. I will read it when we get it. I would like to cross-examine on it.

The Witness. I will read it. We got it over the phone a few minutes ago.

Mr. Isseks. I would rather have the schedule. I want to cross-examine you on it if I may.

The Witness. You may.

The COURT. Finish with this first. What about those letters?

Mr. SEYMOUR. Counsel for the Government were given them and they may have mislaid them. They were furnished to them.

Mr. ISSEKS. While my associates read these letters, I would like to have the witness read that. I want that chart. I would like to see that chart they said they had about these various types of lenses.

728 The COURT. Not a chart but a physical exhibit.

Mr. ISSEKS. Yes. I have my own if they do not want theirs. I have three lenses I would like to show your Honor. They stopped me twice.

The COURT. Let us do one thing at a time. Are you ready with the letters?

Mr. ISSEKS. My associate would like to look at the letters first.

The COURT. Very well. Do you want to proceed with the information that he was to give?

Mr. ISSEKS. I will take the figures from him first.

The WITNESS. Uncut lenses, 42½ percent; semifinished lenses, 33½ percent; rough blanks, 10 percent; total, single vision, 86 percent.

Q. All the figures you have given up to now are single vision?—A. Yes. Rough blanks, in bifocals, 4 percent; semifinished bifocals, 10 percent; total of double vision or bifocal, 14 percent; 100 percent is the total of single vision and bifocal. That does not take into consideration one percent of specials at the factory. That is very close.

The COURT. Very good. You may proceed.

Q. You had some other figures you were to give; the aver-

729 age price of the single vision and average price of the bifocal.—A. We always figure the average price at which we sell our lens and lens blanks, single vision and bifocal. We have not divided it. That average price is from $1.70 to $1.75.

The COURT. Per lens or per pair?

The WITNESS. Per pair.

Q. That is from you to the wholesaler?—A. Yes.

Q. Do you have the average price from the wholesaler to the retailer which is included in your price you give the wholesaler?—A. I can explain that if you like.

Q. Do you have any figure in mind? They sell at a higher price than they pay you, don't they?—A. Yes.

Q. Do you know what that average figure is?—A. It depends on whether or not they do any work on it.

Q. I am talking about stock, not prescription.—A. On stock. They take the product as they get it from us and they ship to the stock buyer as they get it.

Q. That is right.—A. On stock.

Q. What is the average price on that? That is what I am trying to get at.—A. The average price? I would say that the—well, you can get that out of the figures. You have the prices.

By the COURT:

Q. The price list will indicate the percentage of mar-
730 gin?—A. Yes. They buy in different columns. We do not know what price the wholesaler gets from the retailer. We know what we get from him.

Q. I think you can figure it out. This average price of $1.70 to $1.75, as you stated, does that include specials?—A. No. The specials amount to less than one per cent of our business. The wholesaler takes the materials and converts it into a finished product and puts his label on it, and generally that is his cost.

By Mr. ISSEKS:

Q. Before we go into these lines of lenses, I would like to ask one more question: the Soft-Lite Lens Company does no fabricating, if I may use the word?—A. None at all.

Q. All it does is act as a middle man. It clears the lenses which it purchases from the Bausch & Lomb Company and sells them to the wholesalers.—A. I would like to put it my way. I do not like the way you put it.

Q. Yes. You go ahead.—A. The Soft-Lite lenses are made on our order in accordance with our specifications and supplied to us by the factory, carried by us in all forms and all foci, several hundreds of thousands of lenses at all times, sold to the wholesalers and sold to the retailer through the wholesaler.

By the COURT:

Q. Say promoted through the retailer.—A. Well, we
731 sell——

Q. You sell in the sense of talking——A. Yes; and promoting. We do not bill the retailer. We do the job of selling the product, distributing the product. We create the demand.

By Mr. ISSEKS:

Q. You do not do any prescription work.—A. No, sir.

Q. You testified before there were some rare instances where Bausch & Lomb did the prescription work?—A. We referred to that before as "specials."

Q. You do not do any of that?—A. No.

Q. In other words, any fabrication, if I may use the word, done by the wholesaler or by the retailer, or Bausch & Lomb?—A. That is right.

Q. Never done by Soft-Lite Lens Company?—A. That is right.

Mr. ISSEKS. Now may we have those lenses?

The COURT. Before you get to that, have you got your letters disposed of?

Mr. ISSEKS. We offered this correspondence and I understand it shows that this company, whose name appears here, Roddy, Kuhl & Ackerman, was put back on the Bausch & Lomb list, but there is nothing to show here, and I would like to have the information if they went back on the Soft-Lite list.

732 The COURT. Ask the witness that.

Q. Do you know whether Roddy, Kuhl & Ackerman was put back on the Soft-Lite list?—A. I do not know whether they were taken off and I do not know whether they were taken on.

Mr. LEHRICH. We will check that.

The COURT. You ascertain the fact and then Mr. Isseks can offer it.

Mr. ISSEKS. I offer first a memorandum dated 2/1/39, addressed to Howard Bolles, from Withington.

(Marked "Government's Exhibit 199.")

Mr. ISSEKS. The next relates to the same subject matter, and is from Mr. Withington to Mr. Bolles.

(Marked "Government's Exhibit 200.")

Mr. ISSEKS. The next is a letter dated February 24, 1939, addressed to Roddy, Kuhl & Ackerman, written by Bausch-Lomb Optical Company, H. K. Bolles.

(Marked "Government's Exhibit 201.")

Mr. ISSEKS. I do not intend to offer these lenses in evidence, but I think they will help me and perhaps your Honor if we have the witness explain what these lenses are.

The COURT. Very well.

Q. I show you a box which has been designated by someone who prepared it "Box 1," and marked on the memorandum,

733 "Rough blanks. Certified. Semi-finished." I am going to take one at random.

Mr. ISSEKS. I would like to show these to your Honor. This is a rough blank.

Q. (Continuing.) Will you please tell us the form in which they come. The one I took out says "Toric rough blank. 57 RD." What does "RD" mean?—A. 57 millimeters ground.

Q. Now all these lenses in this box are what are called rough blanks?—A. Yes.

Q. Are they all single vision, do you know?—A. May I ask a question?

Q. Sure. [Witness consults with his assistant.]

Q. As I understand it from the conversation going on between the witness and one of his representatives, all the blanks in that box are rough blanks?—A. Yes.

Q. Except one which is semifinished.

Mr. Issers. Maybe we can get that one out and show you the difference. I would like to have some of this information on the record.

Q. The Court asked you, Mr. Singer, when some of these numbers come off. When is that done?—A. When grinding is done.

Q. By the wholesaler or retailer?—A. Whoever grinds the blank. The number goes off. You cannot use any of
734 the Soft-Lite lenses or lens blanks on the patient in the form in which we sell them.

Q. That is what I am interested in finding out. That applies not only to rough blanks but it applies to semifinished and even uncut?—A. Yes.

Q. In other words, every blank that you get from Bausch & Lomb, and in turn distribute to the wholesaler, who in turn distributes to the retailer or the consumer, has to be fabricated in some measure?—A. Not fabricated. Edged or mounted, as I told you before.

Q. Something has to be done with it?—A. Yes, in some minor form.

Q. Sometimes in some major form?—A. Some major; yes.

Q. In other words, no blank you turn over——A. You cannot wear a blank; you have to grind it.

Q. Take my glasses. Assuming they were tinted or Soft-Lite, even though they were uncut?—A. All they take is edging, which most retailers can do.

Q. Will you show his Honor one which is semifinished?—A. [Exhibiting to the Court]. Ground on both sides.

The Court. Now I am holding "Certified, semifinished Lens No. 1."

Q. I understand, Mr. Singer, that would have to be ground, would it not?—A. Let me answer you. The rough molded
735 blank with a cylinder surface on one side, is then designated as a rough toric. Our rough torics are also clean on the other side because we are selling a quality product and we want to save wasted labor and the wholesaler can tell whether the blank is better when it is smooth on both sides. Those are one of the little finishing touches we put on our products.

By the Court:

Q. This semifinished one has been cleaned on both sides?—A. Ground on one side and clean on the other.

Q. It still has to be ground to the particular focus?—A. Yes.

Q. At this time it has no special focus?—A. It has a focus on one side. The cylinder is all on.

Q. All your No. 4's have the same definite color.—A. The No. 4 is a term used to designate a density of color.

Q. The types you have?—A. Yes, sir.

Q. And then 3, 2, and 1 grow fainter?—A. They are stepped up from one to 4.

By Mr. Isseks:

Q. The box No. 1 contains all single vision blanks?—A. Except the one blank which is a rough cylinder.

Q. But that is single vision too?—A. All single vision.

Q. Now I will go to box No. 2, if I may. I now show you box No. 2.

The Court. You are not offering them?

736 Mr. Isseks. I did not intend to. If the other side want to offer them I won't make any objection. It is not necessary in this case, but I wanted your Honor to see them and I wanted the method of doing business for the record.

Q. Box No. 2 says, "Large size, rough blanks." There are four large size rough blanks, are there not?—A. Yes.

Q. And then there are two large size certified uncuts?—A. That is right.

Q. Now I would like to have you explain to the Court the reason—these are single vision too, are they not?—A. Yes, sir.

Q. (Continuing.) The reason for making them in the large size, both rough and semifinished?—A. Those are for oversize requirements. The rough blanks, the large size rough blanks are for prescriptions in cases for outdoor wear, or for shooting or some other special sports. And the uncut form is the rough blank, ground plano for similar use without prescription.

Q. That uncut is finished?—A. Uncut; ground on both sides; yes, sir. That type represents about probably less than one per cent of our business, or half a percent.

Q. The first box represented the principal amount of your

737 business, the one you mentioned before?—A. No; the first box, rough blanks, represents 10 percent of our business.

Q. Single vision?—A. Yes; ten percent of our total business.

Mr. Seymour. Wouldn't it be well, just as a matter of identification, to have these boxes identified?

Mr. Isseks. They are all marked with numbers.

The Court. You can mark them for identification if you wish.

Mr. Isseks. I have no objection. They are all numbered.

Mr. Seymour. Have you indicated anything as to that in your questions?

Mr. Isseks. Yes; I have always talked about the box. The first box is number 1, and it has 15 lenses.

The Witness. Fifteen lens blanks.

Mr. Isseks. And 14 are rough, single vision, and one certified, semifinished single vision.

The Witness. Yes, sir.

Q. The second box has six lenses, four of which are designated "Large size rough blanks. Single vision." And two "Large size, certified uncuts." The witness testified that means finished on both sides?—A. An uncut is always finished on both sides.

738 Q. Now there is a box here marked No. 3, and in the front it has six large size certified uncuts, single vision, are they not?—A. Yes.

Q. And your explanation about the last two uncuts apply to these the same?—A. Yes. It just shows the various shades in which we have to carry them.

Q. Now box No. 4 has, has it not, four certified semifinished single vision lenses—these first four [indicating]?—A. Certified semifinished; yes.

Q. And then it has eight——A. It shows the four shades.

Q. That is right, and then it has eight single vision uncuts which are finished?—A. Yes.

Q. And then it has three rough blanks——A. Rough bifocal blanks.

Q. Rough bifocal blanks that you call duosites?—A. Yes.

Q. That is your principal bifocal blank, is it not—duosite?—A. It is one of our principal sellers. I do not know what the proportion is.

Q. That is all right. Now taking box 4, the finished lenses, the eight, those are the ones you testified are the principal item of your business more than any other item?—A. Well you have the figures.

Q. I cannot keep the figures in my mind?—A. They are 40 percent uncut.

739 Q. Single vision?—A. Yes.

Q. Now, on the three bifocals, those are molded blanks and have to be——A. Those are fused bifocal blanks in the three shades.

Q. And they have to be worked on by either the wholesaler or retailer?—A. That is right. They have to be surfaced.

Q. That is right, and the bifocal part, namely, the reading part, has to be worked on more extensively than the rest of them because of the projection?—A. I do not know how much more work it involves; no.

Q. Your associate says no. That is done, as you have already testified, by either the wholesaler or retailer?—A. Whoever it is who does the surfacing will do that job.

Q. Now, box No. 5: there is one rough bifocal and one color, is there not?—A. That is a No. 4 shade bifocal.

Q. And then you have in the same box three semifinished bifocals, the same as in the last box, except these have been ground down on one side?—A. That is right.

Q. And then you have a rough bifocal in———A. Ultex.

Q. It does not say so here, but you know?—A. That is a flat rough duosite bifocal.

Q. And then you have here five Ultex bifocals, semifinished?—A. Ultex are only made in semifinished form.

Mr. SEYMOUR. Wouldn't it be well for him to
740 explain what is an Ultex?

The WITNESS. An Ultex bifocal is made of a solid piece of glass in various shaped segments, and duosite or Kryptok bifocal is made of two pieces of glass fused together, one flint and the other ground.

Q. Then you have two flat thin——A. Two Thin-lite Soft-Lite blanks, No. 1 shade, and one flat and the other molded.

Q. Then you have two Laminex Soft-Lite shade?—A. We have three Laminex Soft-Lite blanks, one light shade and another medium, and a third dark shade.

Q. Are any of those finished or semifinished?—A. They are all made semifinished only.

Q. I show you box No. 6, which has various types of Orthogon lenses. I will take them separately. Orthogon is a corrected lens, is it not?—A. Yes.

Q. And it is a name used by the Bausch & Lomb Optical Company?—A. It is their registered trade-mark.

Q. And when you testified before that some forty percent of your business was single vision lenses you included Orthogon?—A. Orthogon and Balcor.

Q. By Balcor——A. And certified.

Q. You have a special Balcor?—A. No; we have Soft-Lite lenses and corrected and uncorrected. The corrected is
741 Orthogon and the uncorrected we call certified. They call it Balcor.

Q. What percentage of that forty-odd percent of single-vision lenses, Soft-Lite, was the Orthogon single vision, if you know?—A. I do not know offhand, but Orthogon is about 25 percent of our total; three-quarters of what we sell is not corrected.

The COURT. What is it corrected for?

The WITNESS. Corrected to the very edge of the lens. One sees more nearly the prescription prescribed whether one looks through the edge of the lens or through the center of the lens. It is a better form or finer form by Bausch-Lomb.

Q. The first two are Orthogon uncut Soft-Lite?—A. Yes; you have a Soft-Lite Orthogon uncut, No. 1; Orthogon uncut Soft-Lite No. 2; and then you have an Orthogon semifinished Soft-Lite No. 1, No. 2, No. 3, and No. 4. That is the way we stock them.

Q. Then you go to the bifocals?—A. Then you have the Nokrome bifocal D No. 1, Soft-Lite; and Nos. 1, 2, and 3; and then

we have the Nokrome C as bifocal Soft-Lite No. 1; then the Orthogon Ultex bifocal, A segment Soft-Lite No. 1, A segment No. 2, B segment No. 1, B segment No. 2, AA segment No. 1, and so on.

Q. All these bifocals are semifinished?—A. Yes; they are made only in semifinished.

742 Q. The last box, box No. 7, is a box, is it not, of various bifocals?—A. Yes. Other than those already shown.

Q. Yes; that is right, and they are there in the rough blanks?—A. Let me read them to you. Would that be better?

Q. Certainly. Go ahead.—A. Orthogon Ultex bifocal, AA segment, Soft-Lite No. 2, shown here [indicating]. An Ultex is always semifinished. That is carried by us in various shades. We just show a sample of one shade in some cases; semifinished Panoptik bifocals Soft-Lite No. 1; the same No. 2; the same No. 3; a rough Panoptik bifocal Soft-Lite No. 1; same in the rough prism segment; Panoptik bifocal Soft-Lite No. 1; a flat semi-finished Panoptik bifocal Soft-Lite No. 1; Fulvue bifocal Soft-Lite No. 1; Fulvue bifocal Soft-Lite No. 2; Unisite bifocal Soft-Lite No. 1; CV bifocal Soft-Lite No. 1; flat Ultex A segment Soft-Lite No. 1; Ultex E segment Soft-Lite No. 1 with prism in segment; a dualens Soft-Lite light shade; a dualens Soft-Lite dark shade. That is almost a complete line with a very few exceptions.

The COURT. Are you through with Mr. Singer?

Mr. ISSEKS. I would like to see if we can get a stipulation. Perhaps the witness will help me as to the total amount of

743 rose-tinted lenses, as to the business done by Soft-Lite Lens Company on that as compared to everybody else.

The COURT. That is the percentage of the total rose-tinted business in the United States and the percentage thereof that is done by Soft-Lite?

Mr. ISSEKS. That is right. I understand it is around 48 to 49 percent.

Mr. LEHRICH. There is no basis for that statement. I am willing to stipulate it is an infinitesimal fraction.

The COURT. All right. We cannot stipulate.

Mr. LEHRICH. That statement was made for the record to convey it to your Honor.

The COURT. Of course it is not made for the record. You know better than that. It pours off of me like water off a duck's back. Have you any proof on that?

Mr. ISSEKS. Your Honor, my associate and I would rather tell your Honor off the record in the presence of counsel how we got it.

The COURT. Not how you got it but whether you want to get it in the record. Do you want to ask the witness?

Mr. ISSEKS. No.

744 The WITNESS. If you ask the question, I would like to answer it.

Mr. ISSEKS. I do not want to ask it. I asked you a question before and I got a wonderful answer.

The COURT. Therefore you want to stop at this point? Is there going to be cross-examination of this witness?

Mr. LEHRICH. Yes; your Honor.

The COURT. On both sides or just one?

Mr. SEYMOUR. Mr. Lehrich will examine first and then I have a few questions.

The COURT. How many more witnesses have you?

Mr. ISSEKS. We have five or six witnesses, your Honor, all local people in this city, retailers, who will testify to the price from retailer to consumer. If it will facilitate matters, we would like to put them on any time the cross-examination is finished.

The COURT. Why don't you put them on tomorrow?

Mr. ISSEKS. Yes; we can get them all here in the morning.

The COURT. Do you think you will be through with Mr. Singer by this afternoon?

Mr. LEHRICH. I doubt it very much. I suggest, if your Honor please, in order to make it possible for us to be through with Mr. Singer in one stretch, we might ask Mr. Isseks to call these local witnesses that he has.

745 Mr. ISSEKS. I cannot get them here today, because they are all in their own shops and we told them we would call them on the telephone. I am prepared to go ahead with Mr. Sterling and Mr. Ramaker.

Mr. SEYMOUR. It occurs to me the practical thing to do is not to inconvenience these local fellows and whatever may be the status of Mr. Singer's cross-examination at the time they arrive, we can interrupt the cross-examination.

Mr. ISSEKS. I will have them here in the morning.

The COURT. You will proceed this afternoon with cross-examination of Mr. Singer then?

Mr. LEHRICH. Yes, your Honor.

(Recess until 2:15 p. m.)

746 AFTERNOON SESSION

NATHANIEL SINGER resumed the stand.

Cross-examination by Mr. LEHRICH:

Mr. LEHRICH. Your Honor, some of this will necessarily be repetitions, but I am trying to get a coherent chronological story here.

Q. Mr. Singer, I understood you to say that you started in the wholesale business in 1922 with the Optical Service Corporation; is that correct?—A. In the distributing business; yes.

Q. That was a company organized by you and your father?—A. Yes.

Q. In which you and your father had control?—A. Yes.

Q. Prior to 1922 were you connected with your father's retail establishments?—A. Yes.

Q. For what period?—A. Well, I went from law school into the army, and when I came back from France I puttered around for a few months. I had always visited my dad's retail establishments from time to time, and I decided to go into it on a full time basis.

Q. You actually went into your father's business——A. About 1919, and full time by the end of the year or first of the next year.

Q. In your father's retail establishments was he selling Soft-Lite lenses?—A. He was.

747 Q. Where was he getting the lenses, do you know?—A. He was getting the glass from France.

Q. Was he having the glass ground by American manufacturers?—A. Yes; he was.

Q. Was he selling those lenses in his establishments under the name "Soft-Lite" lenses?—A. He was.

Mr. LEHRICH. I want to offer in evidence at this point trade-mark registration issued to Morris Singer on June 3, 1913, No. 91909, renewed March 7, 1933, to Soft-Lite Lens Co., Inc., covering the trade-mark "Soft-Lite" as applied to lenses among other products. I have attached the whole chain of title, but I do not know whether that becomes relevant.

The COURT. Without objection it will be received.

Mr. ISSEKS. Your Honor, of course by not objecting we do not concede the validity of the trademark.

The COURT. I understand that.

Mr. LEHRICH. There is no dispute about the chain of title?

Mr. ISSEKS. Not at all. If you say it is there, it is all right with me.

(Marked "Defendant's Exhibit I.")

Q. Up to 1922 when your father and his establishments were selling Soft-Lite lenses, were there other rose-tinted
748 lenses on the market being sold by other retailers and wholesalers?—A. There were.

Q. Your father applied the name "Soft-Lite" to the rose-tinted lenses which he was selling in his establishments?—A. Yes, sir.

Q. And which were made from the glass which he was obtaining from France?—A. That is right.

Q. Mr. Singer, when you started in 1922, I think you said you sold Thin-Lites and Soft-Lite lenses.—A. That is right.

Q. To clear that up, what were Thin-Lites?—A. Thin-Lite was our registered trade name for a high-quality white flint glass.

Q. What was its principal function?—A. The purpose of which was when ground to be much thinner in appearance than when the same prescription was ground out of crown glass.

Q. That is, made from other glass, a lens made in that prescription was very heavy in weight and appearance?—A. It would be much heavier in appearance.

Q. It distorted the appearance, to the eye, did it not?—A. It was not nearly as good-looking as a Thin-Lite lens was.

Q. You also sold Soft-Lite lenses from the time you started the Optical Service Corporation?—A. That is right.

Q. And those were the same lenses that your father had
749 been selling in his retail establishments?—A. That is right.

Q. Will you tell us how you proceeded to market the lenses, the Soft-Lite lenses, after you formed the Optical Service Corporation?—A. We solicited the retailer, principally the optometrist, told him of the virtue of our lenses——

Q. By soliciting you mean you called on him and told him.—A. I used the word "sold" but that is banned, so I will now use the word "solicited."

Q. You are using the word "solicited" since his Honor's comment about the distinction between soliciting, promoting, and selling?—A. Yes. I promoted the use of our product to the retailer—that it was to his best interest, and of course to ours, that he use our lens more and more frequently; that it had merit, good appearance, good name, was preferable to the then standard colored glass known as Crookes; that it would not be commercially merchandized; that it would be sold by the finest practitioners; that we were doing an extensive practice-building advertising job, and that our advertising would be as ethical as we wanted our policy to be.

Q. However, did you solicit orders from the retailers?—A. Not for direct billing. Everything was done through the wholesaler. That has been the way since the very beginning of
750 our business.

Q. In other words, you shipped and sold only to the wholesaler?—A. Only to the wholesaler, but we did the work on the retailer.

Q. You developed customers for the wholesaler?—A. That is right; on our product.

Q. When you reached the point with the retailer where he was interested in your product and was willing to buy some, did you have a classification of the retailer, giving the terms under which

he would buy from your wholesaler?—A. No. You are talking about the stock dealer. We did missionary work on those who bought stock and on those who prescribed without putting in stock. The stock dealer was a fellow who invested in a stock of lenses which he procured from our wholesaler, and that gave him the privilege of buying single pairs subsequently at the same price and discount.

Q. Then you called on all retailers?—A. That is right.

Q. And those who put in a stock of lenses purchased from the wholesaler were called thereafter, or became thereafter, stock retailers?—A. That is right.

751 Q. Because of that investment in the stock? And incidentally, how much of an investment was that?—A. $417 net, which was $638, less 33⅓ per cent, or $417 net. That was for 215 pairs of lenses.

Q. He bought an assortment of lenses which ran into $417?—A. Net.

Q. And thereafter he was a stock dealer?—A. Licensee.

Q. A stock dealer?—A. Yes, sir.

Q. And he was entitled to receive a discount of 33⅓ per cent from subsequent purchases?—A. That is right, without having to restock that quantity. He could buy a few pairs at a time.

Q. Now, the prescription retailer purchased from the wholesaler on what basis?—A. As he did everything else. We had nothing to do with him.

Q. Were those two classifications generally prevalent in the optical business?—A. Yes; the stock retailer and the prescription retailer; yes.

Q. And were purchases under different discounts?—A. Yes, sir.

Q. That was no innovation as far as you were concerned?—A. No. We only solicited stock orders from those in position to use them, and that is those who used it in stock quantities anyway.

752 Q. If a retailer purchased a stock of lenses from a particular wholesaler and thereafter he replenished that stock by purchasing from another wholesaler, he still got that discount?—A. That is right.

Q. How did your various wholesalers get the information as to which retailers were entitled to the stock discounts?—A. Our custom was when a stock was sold to a retailer to wait thirty days to insure payment at least of part of it to the wholesaler who sold and billed, and then we sent an announcement to all the other wholesalers in the territory stating that if that retailer comes to you for Soft-Lite lenses, he is a stock dealer and entitled to the stock discount.

Q. Now when a wholesaler independently sold a stock quantity to a retailer did he notify you that he had made such a sale?—Yes,

he did; principally because he wanted us to send advertising material to the retailer.

Q. Now when you received such a notification from a wholesaler, did you advise all the other wholesalers in that territory that that retailer was thereafter to receive stock discounts?—A. We did.

Mr. LEHRICH. I now offer in evidence prescription price list of Soft-Lite lenses which has at the bottom a notation, "Effective February 10, 1923." "Issued by the Optical Service Corporation."

Mr. ISSEKS. No objection.

753 (Marked "Defendant's Exhibit J.")

Mr. SEYMOUR. I do not suppose I need to record the fact again that my position is the same as to any evidence offered by this codefendant dealing exclusively with Soft-Lite operations; that it is not admissible as against Bausch & Lomb.

The COURT. Very well.

Mr. LEHRICH. I want to direct your Honor's attention to the sentence or clause appearing above the word "Meniscus," "Distributed by America's leading prescription jobbers," and also the reference under Soft-Lite lenses, "Made in France. Registered U. S. Patent Office."

Q. Mr. Singer, in 1922 and up to 1924, did your company prepare and distribute price lists?—A. We did.

Q. Will you tell us what price lists you prepared and distributed?—A. We prepared and distributed printed prescription price lists and to our wholesalers we told them that their costs were based on the uncut lenses on that prescription list, prescription price list, less their discounts.

Q. In other words, in the early days, in 1922, you had only one price list?—A. That is right.

Q. And having that prescription price list the discounts for the wholesaler and the discounts for the stock dealer were com-

754 puted from the prescription price as a base?—A. From the uncut. That is right.

Q. Did you distribute, print or distribute, at any time, a price list telling the retailer what to charge the consumer for Soft-Lite lenses?—A. No. We have never done that.

Q. In the early days or up to the present time?—A. We have never done that.

Q. Now when you obtained a wholesaler or interested a wholesaler to take on a stock of Soft-Lite lenses and become a Soft-Lite wholesaler, what was the procedure that was followed to accomplish that arrangement?—A. We would first do some missionary work on the retailers in his territory. We would sell them on the idea of using Soft-Lites. They would say "Where can we get them from?"

Q. Let us get down to the point where the wholesaler is interested and says "I will buy your lenses." Tell me what you did with them at that point?—A. Well, we always used a minimum requirement, a thousand dollars or twelve hundred dollars, and if the wholesaler was not in position to pay in cash terms, we split shipments or billing over three or four months. We would advise him and he could either prepare his order—although generally the first year or two I did it with him—and if he would say "I
755 don't know just what to get," I would say "All right, we will prepare it, and at the end of ninety days if you have any foci and you want to exchange, you have the privilege of exchanging. You pay for these lenses and you go out and sell them and we will help you by doing a real promotional job."

Q. And he gave you an order for a minimum quantity?—A. That is right.

Q. And you worked out for him his foci?—A. That is right.

Q. Did he sign any paper for you or any documents?—A. There was none.

Q. Did you have any written agreement of any kind with the wholesaler?—A. No.

Q. Is that true to this very day?—A. That is true.

Q. To this very day when a wholesaler qualifies and orders your lenses, and by qualifying I mean he orders a minimum quantity——A. Puts in a stock.

Q. Does he sign any agreement or is any document exchanged between Soft-Lite Lens Company and the wholesaler with respect to his subsequent representation as a Soft-Lite wholesaler?—A. No; other than the welcoming letter.

Q. Well, he orders the lenses——A. And we ship.

Q. And then you send him the welcoming letter which is in evidence?—A. That is right.

756 Q. And that has been your method of operation from the time you started——A. From the time I started——

Q. Right down to date?—A. That is right.

Mr. LEHRICH. My attention is called to the fact that a different arrangement was made in 1939 when we put in the Fair Trade contract, so I will cover that separately later, but I just want that amended to that extent.

Q. Now from 1922 to 1924, when you sold wholesalers and when you solicited retailers, what arrangements, if any, did you make as to resale prices?—A. Well, our policy has always been the same. We had a suggested prescription price, a suggested stock price for the wholesaler, and we asked him to follow it, and the retailer knew what he was expected to pay for it. That applied to stock only, you know.

Q. Did you tell them what your policy was?—A. Very definitely.

Q. Did you enter into any agreement with him that he would carry out that policy?—A. No. We told him we expected him to carry it out and if he did not, we would stop doing business with him. We told him very plainly.

Q. Has that been your method of procedure from 1922 right down to date?—A. Yes; and it was a very effective one.

Q. You say you did extensive advertising.—A. We did
757 and we do.

Q. Well, your company sells only the one product, the Soft-Lite lenses?—A. That is all.

Q. And you concentrate on Soft-Lite lenses?—A. Yes; the Thinlite was never more than a fraction of the business and that has been virtually discontinued.

Q. What I mean is as distinguished from other companies selling lenses.—A. We are the only one in the business doing what we are doing.

Q. You do really a specialty business in a sense?—A. Exclusively Soft-Lite.

Q. And all other companies in the optical business sell a varied line of ophthalmic goods?—A. Well, the big factory sells up to one hundred different lines, frames, mountings, equipment, and the smaller factory will sell a lesser number of specified products, but we sell only one product, Soft-Lite.

Q. And all your selling and advertising was concentrated on the one product?—A. That is right.

Q. Did any of your salesmen while working for you sell any other product?—A. No; they all work on a salary basis.

Q. Have you any figures on what advertising you did in the earlier years?—A. Yes.

Q. In the earlier years?—A. Well, in the last ten or
758 fifteen years.

Q. Before we go into the figures, Mr. Singer, will you tell his Honor the type of advertising material that you furnished in the earlier years of your company's business?—A. Well, we would furnish leaflets which we called "Practice building aids." We originally called it "Business building," but our type of customer preferred the term "Practice Building."

Mr. Isseks. If he is referring to a written document, I would like to see the document because it may be helpful.

Mr. Lehrich. We do not have any of the advertising material going back to 1922 and 1924.

A. (Continuing.) Supplied window cards, or took something that was different and unusual and glorified it and glamorized it. I remember we got a quantity of sailing vessels and little

ships and loaned those to retailers as a window display and had the word "Soft-Lite" in it, and they had a light inside; and then we used the Aurolite Globe, which we got exclusively for the optical business as long as it lasted, and each year we would put out a little plaque with one of our slogans, saying "The ample comfort of old cathedral windows is given to the eyes
759 through Soft-Lite lenses," and so we tie that up with the cathedral and used it in our advertising.

Q. Generally speaking, it was window display material?—A. That is right.

Q. And counter display material?—A. And mailing pieces.

Q. Was it material to be mailed to the retailer and to his patients?—A. That is right. It is all practice building.

Q. Was there any other tinted lens company who advertised in this way?—A. The Crookes Glass.

Q. And were they furnishing to the same extent the same type of advertising you were?—A. That is what we refer to as merchandising. Theirs was more the merchandising and commercializing. They were featuring their product almost over the heads of the practitioner. We assured the practitioner we would feature our product as part of his service. We sold the idea of our product to the retailer. We sold the value of our product to the consumer through the retailer and we left it to the retailer to prescribe it.

760 Q. Did you talk with groups of retailers?—A. Yes.

Q. Did you address them at meetings?—A. Yes.

Q. And point out the advantages of your lenses?—A. Yes; I did.

Q. Did you talk to wholesalers' organizations?—A. We really started sales meetings of wholesalers, in which we would get the groups of the individual wholesalers or community wholesalers, a group of them, to listen to the talk on Soft-Lite lenses, the advantage of the lens, our sales policy, ethical, practice-building aids we were introducing, in subsequent years.

Q. Those were sales——A. Sales aids, we called those.

Q. Those were meetings at which they brought in all their salesmen?—A. Branch salesmen meetings.

Q. In which they were told the advantages of your lenses, and how to sell them?—A. That is right.

Q. At those meetings were any questions of price discussed, such as cost to the wholesaler?—A. No.

Q. Or cost to the retailer?—A. No; I was giving a promotional talk, not a merchandise talk.

Q. Were those talks primarily addressed to telling the salesmen how to sell lenses?—A. That is right; and how our product was superior to any others that might be offered.

Q. You conducted that type of promotional work throughout the country, travelled throughout the country?—
761 A. All over the country. One of the first meetings I addressed was a group of oculists in Los Angeles. That was in 1922, 1923, or 1924.

Q. Mr. Singer, you tried to sell Roy Wahlgren, didn't you, on Soft-Lite lenses?—A. I did.

Q. To the best of your recollection, when did you first meet Roy Wahlgren?—A. I would say in 1922, my first trip that far west.

Q. Did you meet him in the regular course as one of your solicitations for business?—A. Yes; I was out on a trip.

Q. And you tried to sell him lenses?—A. That is right.

Q. You did sell him some lenses in 1922, didn't you?—A. Yes.

Q. I call your attention to a memorandum I have in my hand and ask you whether that refreshes your recollection as to when you first sold Riggs Optical Company, Omaha, Mr. Wahlgren's company, some lenses [handing to witness].—A. I remember it very well. Shipment was first made to him in the fall of 1922. Thin-Lite blanks.

Q. What month?—A. October.

Mr. Isseks. I did not hear the answer. You sold him Thin-Lite lenses?

The Witness. Thin Lite blanks.

Q. How long before that first shipment was made would you say it was that you met him?—A. Well, if I know my way
762 of operation, if I shipped in October I sold him a few days before that, because every dollar counted. Then I saw him in September, or really in October.

Q. I notice you sold lenses to his company in October, November, and December 1922.—A. That is right. Almost $2,000 worth.

Mr. Isseks. Your Honor, we are here using the word "lenses" freely.

The Witness. Blanks.

Mr. Isseks. I want to know whether they are Thin-Lite or Soft-Lite.

Mr. Lehrich. I will clear that up in just a minute.

Q. And the total of your sales in those three months was $1,960.18. Tell us what type of lenses you sold him?—A. Thin-Lite blanks.

Q. Were there any Soft-Lite lenses in those sales?—A. No.

Q. Will you tell us what happened, or what, if anything, occurred, when you tried to sell him Soft-Lite lenses?—A. Well, you must keep in mind that in 1922 Crookes was a very good seller.

He was not interested in another tinted lens. I worked on him as hard as I could and tried to interest him again in 1923, when his Thin-Lite purchases began to wane a little.

763 Q. In 1922 you tried to sell him Soft-Lites?—A. Yes; but he had no interest in it at all.

Q. Did he give you a reason?—A. He said there was no demand for them, no market for them, "I don't know where you get your glass, I don't know where the grinding is done; it sounds like something that I do not want to put any money behind to promote." He had a sad experience with Radex, a yellow-tinted glass.

Q. He told you his experience?—A. Yes; he imported a glass, and after putting considerable money behind the glass he found that he could not get it in the same tints, or the glass would not stand up in this market, or he was not able to get it on the same basis as the original shipments. He said he was never going to get into trouble like that if he could help it.

Q. So he turned you down completely on handling Soft-Lite lenses?—A. That is right.

Q. The $1,960 that you sold him were all Thin-Lite blanks?—A. Yes.

Q. He put in quite a stock of Thin-Lite blanks at that time; is that correct?—A. Yes.

Q. Taking 1923, will you tell us the months in which you sold him, the amounts that you sold him, and what the merchandise was?—A. Do you want the pennies?

Q. Yes; you might as well give it.—A. January, $26.25;

764 March, $64.28; April, $55.69; June, $27.35; July, $301.76; August, $12.73; September, $65.90. That was all for that year.

Q. The total for that year, then, was $553.96?—A. That is right.

Q. He dropped, then, from $1,960 to $553.96?—A. That is right.

Mr. ISSEKS. I am having the same difficulty, and I would like to know whether they are Thin-Lites or Soft-Lites, again.

Mr. LEHRICH. I asked him to mention them, what they were.

The WITNESS. I am still talking about Thin-Lite blanks.

Q. They are all Thin-Lite blanks up to this point?—A. Yes.

Mr. LEHRICH. I put it in my question.

Mr. ISSEKS. But he did not make it responsive that way.

Mr. Singer, from September 1923 to June 1924, was there a single shipment of anything to Roy Wahlgren's company?—A. The Riggs Optical Company. None whatsoever.

Q. In other words, there is a complete break of shipment from September 1923 to June 1924?—A. That is right.

765 Q. In June 1924, what did you ship him?—A. $46.45.

Q. What were those?—A. Thin-Lite blanks.

Q. And in July?—A. $40.64.

Q. Again Thin-Lite blanks?—A. Yes. In August $416.72.

Q. Stop at that point.

Mr. Isseks. What are they?

Mr. Lehrich. We will come to that in just a moment.

Q. Mr. Singer, from the figures you have just given us it appears you were doing no business with Mr. Wahlgren from September 1923 to June 1924.—A. That is right.

Q. Does that refresh your recollection as to whether or not you met with Roy Wahlgren or saw him at any time during that period?—A. Very frankly, if I could not get an order I would not call. I never called on a customer for nothing. And otherwise it would be the advertising that I was interested in. I stayed with him until I got it. There was no use trying to sell him Soft-Lite, and Thin-Lites he was buying when he needed them. It was too expensive to go to Omaha to try to sell a man another few pairs of Thin-Lites.

Q. He had very definitely told you——A. Very definitely.

Q. In 1922 and 1923, that he did not want Soft-Lites because you had no assured source of supply?—A. That is right; he
766 was not going to get into the position that he had got in with Radex.

Q. These shipments through 1923 and 1924, in small quantities, are those refills?—A. Yes.

Q. Of Thin-Lites, adding to the original stock?—A. Yes. It might have been to his branches.

Q. Mr. Wahlgren said in 1924 he talked to you about going to Bausch & Lomb. Did you hear his testimony?—A. Yes; I did.

Q. Is your memory refreshed as to whether or not that took place at all?—A. It never took place.

Q. At that time?—A. At that time.

Q. Well, you were not seeing him, I understand you to say, from September 1923 down to June 1924.—A. That is right.

Q. You are pretty definite about that?—A. Sure of that. I would say, further than that, either August or September, after I got an assurance from Bausch & Lomb that they were in a position to supply me with the rough glass——

Q. I will come to that. Early in 1924, I think you testified you talked with a Mr. Tom Byrne about the opportunity of getting Bausch & Lomb to fuse some bifocals for you?—A. That is right.

Q. Had you done any business of any kind with Bausch & Lomb prior to that date?—A. No; none at all.

Q. Who was Tom Byrne?

767 Mr. Isseks. Your Honor, I hate to interrupt, but I wonder whether the witness is impeaching his own testimony; because my recollection is he said he had done some business with him.

The WITNESS. Did you talk about a couple of spectroscopes, in 1922?

Mr. ISSEKS. He volunteered that statement to me.

The WITNESS. Some spectroscopes we got at that time.

Q. What is the spectroscope?—A. We use that to show off the Soft-Lite against other products, but we did not buy it direct, because we had no line of credit with them.

Q. Have you bought a Bausch & Lomb product?—A. An instrument.

Q. Did you buy it direct from Bausch & Lomb in Rochester?—A. I doubt it.

Q. You mean you bought a Bausch & Lomb product as anybody would buy a Bausch & Lomb product, in the open market?—A. That is right.

Q. Was there any business relationship between you?—A. Not at all. I did not know them.

Q. I would appreciate it if you would let me finish the questions, Mr. Singer.—A. All right.

Q. Did you identify Mr. Byrne?—A. Tom Byrne was a Bausch & Lomb sales representative stationed in New York City.

768 Q. Had you met him a number of times before you talked to him about your Kryptok bifocals?—A. Yes; at the Optical Club, which is around the corner from my dad's store.

Q. That is a restaurant where a good many of you people had your offices?—A. That was a luncheon place of optical people. My dad's store was on Fulton and Broadway. That was his first place of business.

Q. Will you give us again the conversation that you first had with Tom Byrne concerning Bausch & Lomb fusing some bifocals for you?—A. I was mentioning at the luncheon table that we were having difficulty in completing our Soft-Lite line, because we could not get fused bifocals made. We had everything else made but the fused bifocals. We just tried one of the other factories, and we were not able to make an arrangement to have them fuse our glass for us. Somebody said, "Did you try Bausch & Lomb?" And I said, "No; I didn't think there was much use. Is there, Tom?" And Tom said, "What do you mean?" I said, "Well, do you think Bausch & Lomb would be willing to fuse some Soft-Lite bifocals for us?" He said, "You can never tell; I will ask." And the following week, he said, "Yes; send us some glass and they will experiment on it and see what it is like."

Q. You say the following week he told you they would?—

769 A. Yes.

Q. Fuse some bifocals for you?—A. That is right.

Q. He told you to send up some glass?—A. To send up some glass and they would experiment on it.

Q. Before you talked to Tom Byrne about this arrangement for fusing some Kryptoks, had you talked to Roy Wahlgren about the possibility of Bausch & Lomb making glass for you?—A. It never came to my mind.

Q. You are sure of that?—A. Absolutely.

Q. Now did you send some glass up to Bausch & Lomb?—A. Yes.

Q. That was your French glass?—A. That is right.

Q. Did you go up to Bausch & Lomb's?—A. No; it was all done through Mr. Byrne.

Q. Did you tell him what you wanted done?—A. Yes; we told him, "Here is what we would like to do—make us several pairs of each, maybe 50 or 100 pairs, ship them down and we will see what they are like; let us see how they come out first, and let us know what our cost will be, what you are going to charge us for it." He said, "What have you been paying?" I told him. He said, "All right, we will take the experimental order on the same basis."

Q. You did not go to Rochester?—A. No.

Q. Or meet anybody else of Bausch & Lomb?—A. No; it
770 was done through Mr. Byrne, their representative.

Q. Then you received your Kryptoks?—A. Yes; some of them.

Q. When, for the first time, did you go to Rochester?—A. Well, there is a story attached to that. May I tell it?

Q. First give me the date, will you, please?—A. In May.

Q. Of 1924?—A. Yes; I would say between the 8th and the 10th.

Q. How did that trip come about?—A. We found that the business was growing, and we were having our grinding done in four or five factories located in different parts of the country. It was difficult to render a satisfactory service when we had to go to one factory for one form of bifocal and to another factory for another form. For the semifinished we went to Indianapolis, for the Plano cylinders we went to the Quality Lens Company in Southbridge, and for the Sphero cylinder to another concern, and for the Meniscus to Simpson, Walther Company in Rochester, New York, and the Phillips-Worth Company in Newark, New York.

771 In addition to which we did not have uniformity in the quality, because the first quality lenses, when we got them they had different shapes and things of that kind. So we were doing a little thinking there, my dad and I, and I said it would be a wonderful thing if we could get one factory that would make all of the forms, making our lenses for them. And I called up Tom Byrne. I told him, by the way, that we were very pleased with the blank that came out, that my father ground up some

of those fused blanks and said they were very good, better than anything we had had before. I called Tom, I think it was on a Saturday morning. I said, "Tom, do you work Saturday afternoon?" He said, "Not ordinarily; why?" I said, "I would like to have you come up and have lunch with me, I want to discuss a problem with you."

I was then down in the Knickerbocker Building, at 42nd Street and Broadway. Tom came up. I told him what our problem was, and asked him if there was any chance of Bausch & Lomb, in addition to fusing the blanks, grinding additional single vision lenses. He said he did not know, he would find out. I said "I have a problem. I am leaving on a trip Sunday night, going out west." I was going out to Detroit and Chicago. "Would it be possible at all for me to get an answer from you sooner?"

He said, "Are you going through Rochester?" "Yes." I
772 said, "I generally go to Albany, Syracuse, Utica, Rochester, Buffalo, Detroit, Cleveland, Akron, and back to New York, that eastern swing." It was not Chicago, it was through Cleveland.

"All right," he said, "I tell you what I will do, I will give you a letter of introduction to my boss in Rochester and you show it to him."

Q. Did he tell you who his boss was?—A. Yes; he said it was Mr. Joseph Hammele. I had never met any of that crowd. He said show it to him. He sat down in my office and in longhand wrote a letter of introduction, Nat Singer to Mr. Hammele. He said, Go in and talk to him. I got into Rochester Tuesday morning.

Q. Fix the time again. May or June?—A. This is all in May.

Q. 1924?—A. Yes; I know it was between the 8th and 12th, because I refreshed my recollection by looking at some correspondence my wife is keeping, and I wrote her from Rochester at that time. It was May 8th, or 10th or 12th; something of that kind. I know I got to Rochester Tuesday morning.

Q. Did you go to see Mr. Hammele?—A. I went to Bausch & Lomb, and I sent the letter in, and lo and behold Tom Byrne walked out. I was shocked. I said, "What are you doing
773 here?" He said, "I happened to be up here to a little meeting of our own, we have a meeting upstairs, and the message I got was that you wanted to see Mr. Hammele or Mr. Byrne." He said, "I will go up and get Mr. Hammele. We are busy at a meeting, but try not to make it too long, we want to get right back." I said, "I am glad to get any time he will give me." Mr. Hammele came down and I was introduced by Tom Byrne. We went into Room B. right opposite the visitor's entrance.

Q. Prior to this time had you ever met any of the representatives of executives of Bausch & Lomb except Mr. Byrnes?—A. Nobody from Rochester.

Q. You were taken into Room B, and who was present then?—A. Tom Byrnes, Mr. Hammele and I.

Q. Was Mr. Buldingen there?—A. He probably called him in after we sat and got acquainted. He would always have him there as kind of a secretary.

Q. Will you tell us what you told Mr. Hammele and what Mr. Hammele told you, and what Mr. Byrnes said. Give us the conversation, and indicate in each instance who is doing the talking.—A. I am afraid I did most of it, because I was talking about our product, and knew it very well. I was feeling very exuberant about the possibility of building up a very substantial quality business on Soft-Lite. I told Mr. Hammele our product, our policy, our ideas and our flair for being different, doing
774 things a little unusually, and the slogans we adopted which were very much in line with those promoted by the optometric societies of the country, they were very much alike. I said we could afford to do it because we had no wheels to turn, we were primarily the principal and distributor.

Q. Mr. Singer, before you told him that you told him why you were up there talking to Bausch & Lomb, didn't you?—A. The letter told him that.

Q. Did you tell him what you wanted?—A. I told him the story first. Then I said, "Now we are in a position where we are using extensive grinding, and we would like to have you grind our lenses out of our French glass."

Q. You were telling him the type of operation you were running?—A. Yes.

Q. And how your business had grown?—A. Yes; and I thought it ought to in the future.

Q. Did Mr. Wahlgren or Mr. Hubbell attend that meeting?—A. They neither attended——

Q. Yes or no.—A. No.

Q. Did both or either of them have anything to do with the arranging of that meeting, as far as you know?—A. Absolutely no; I do not know how they could know I was going up. I did not know myself until that Saturday afternoon.

775 Q. In that period you were having little or no contact with either one of them?—A. That is right.

Q. Was either one of them an active or important customer of your company?—A. They were not.

Q. You then got into a discussion with Mr. Hammele which eventually resulted in Bausch & Lomb agreeing to make lenses for you from your French glass?—A. That is right.

Q. And at that time you gave Mr. Hammele or left with his Exhibit 1-B, a list of your customers, list of Optical Service Corporation customers, and a list of retail licensees?—A. That is right.

Q. This list of Optical Service customers, will you tell us just what that list represents?—A. Those are the wholesalers we were selling through.

Q. Were those customers with whom you were then doing business?—A. Yes.

Q. And with whom you had been doing business?—A. Yes; and continuing to.

Q. And your list of retail licensees, what did that represent?—A. Those were the stock dealers.

Q. Those were people who were buying from your wholesalers at stock discounts?—A. That is right.

Q. At that time did you have any such thing as a license?—A. No; that was a glorified term.

776 Q. Had any retailer signed for you, or had you signed for any retailer any document called a license?—A. No.

Q. Any agreement of any kind?—A. No.

Q. Is that just a loose use of the word "licensee"?—A. That was a glorified term. That was part of our halo, and that is all that was and still is.

Q. You mean back in 1924 you were glorified?—A. We always glorify. That is the way we built our business.

Q. What was the purpose of furnishing Mr. Hammele with that list?—A. I will say again in case a wholesaler, or on rare occasions a retailer sent an order for a Soft-Lite special——

Q. Let us get down to the word "special." I think when you testified on direct you used the word "prescription." Is there a difference between the factory special or prescription and the regular prescription that goes to a wholesale?—A. The regular prescription that goes to a wholesaler is filled by the wholesaler.

Q. From stock lenses?—A. From stock lenses, or he can finish the second side and make his own.

Q. Is this factory special a prescription order which goes to the factory because a wholesaler does not stock the lens from which he can fill that prescription?—A. That is right. He does not

777 find it to his interest. A prism bifocal, a wholesaler would be foolish to invest in the raw material and take the risk of spoilage, when he can put that load on the factory, although he does not make the margin of profit that he would if he used his own labor. But he does not take the risk. The factory does not like it; it is a service that they render.

Q. Was there any other reason discussed for the furnishing of that list?—A. No; that was our idea. We supplied the list so

they would know only the names on that list could have a special made for them and shipped without sending the order to us. It was a time saver.

Q. At that time was there any discussion about a subsequent arrangement for the making of glass by Bausch & Lomb for you?—A. No.

778 Q. When for the first time did you discuss the subject, and if so, with whom?—A. After Bausch & Lomb had done some grinding which Hammele told me that they were having difficulty in getting the production up to their own standard of quality when using glass made by them in the United States of America, ours was the imported glass, and he said our glass—I think he said it was too soft, filled with stones, and the quality is not up to the domestic quality, I said, "I am sorry, but that is the glass we have always used and that is the best the factory makes," and he said, "well, you are going to have a smaller percentage of firsts and it is going to become more costly to you and frankly it is going to be difficult for us to handle on a production basis. It would have to be treated different from our own glass and we would like it better if you would consider supplying us with a harder glass," and I said that could not be done, "unless you would be willing to make it for us and then I am not sure that that would be O. K. to my dad."

Q. What did he say in answer to that statement?—A. Well, he said, "if you will give us the specifications we will endeavor to make the glass for you." And I said, "Well, the first thing my dad will ask me is, what protection have we?"

779 Q. Did there come a point at which you and Mr. Hammele discussed the making of glass by Bausch & Lomb for Optical Service Corporation after you had talked with your father?—A. Yes; I came back with the specifications and handed them to Mr. Hammele and he said it would require some further experimental work. He said "The glass is made"—and I think he said in August we got the first melt, and it was after that I made my sales trip and started to talk about supplying quantities for wholesale.

Mr. ISSEKS. The witness said August. I want to know what year.

The WITNESS. 1924 we are talking about all through here.

Q. Mr. Hammele told you they would experiment?—A. That is right.

Q. With the information you would furnish?—A. Yes.

Q. Then did you get a letter dated July 30, 1924, Government's Exhibit No. 2, telling you to come to Rochester?—A. Yes, sir.

Mr. ISSEKS. The witness said August 1924, and the witness refers to getting a letter dated July 1924, I am confused.

Mr. LEHRICH. He said the first melt was finished in August 1924.

Mr. ISSEKS. Thank you very much. It is my fault.

Q. You heard my last question?—A. Whether or not I
780 received that letter; yes.

Q. Then in response to the invitation in this letter did you go up to Bausch & Lomb in Rochester?—A. Yes.

Q. Well, the letter suggests that you come the "early part of next week," which would be the week after July 30, 1924?—A. Yes.

Q. Did you go up then?—A. Undoubtedly.

Q. And did you have a conversation with Mr. Hammele about the making of glass for Soft-Lite Lens Company?—A. Yes.

Q. And who was present at that conversation?—A. The only one would be present would be Mr. Buedingen. He was his assistant. Mr. Hammele, Mr. Buedingen and I.

Q. Don't say "would be," but——A. Mr. Hammele, Mr. Buedingen and I.

Q. Did Mr. Wahlgren and Mr. Hubbell have anything to do with the arrangement of that appointment?—A. No; not at all.

Q. Did you, prior to seeing Mr. Hammele, tell either Mr. Wahlgren or Mr. Hubbell about your pending negotiations with Bausch & Lomb and the experiments they were making?—A. No.

Q. After you talked with Mr. Hammele, you came to some arrangement?—A. Yes.

Q. Well, the memorandum, Government's Exhibit 2-A,
781 of the conversation——

Mr. ISSEKS. What conversation?

Mr. LEHRICH. Exhibit 2-A.

Mr. ISSEKS. I would like to know what conversation which is attached to Exhibit 2. It is dated July 30, but the conversation took place——

Mr. LEHRICH. The memorandum is not dated at all.

Mr. ISSEKS. That is what I am trying to find out.

Mr. LEHRICH. He fixed the conversation as the week after the July 30th invitation.

Mr. ISSEKS. As far as I know, the memorandum is attached to the exhibit, and it is contemporaneous, and I don't think counsel ought to suggest a different date.

Mr. LEHRICH. The letter of July 30th, if your Honor please, says that "We are pleased to inform you we have decided to manufacture the Soft-Lite glass." And then it goes on, "Now that no further obstacle presents itself we shall be pleased to proceed quickly in the production of this glass, but as you undoubtedly know, we are in our vacation period and operations will not be

resumed until August 4th. At that time the matter will be taken up for immediate consideration. It might be desirable for
782 you to arrange to come to Rochester and spend the day with us in order that we may proceed intelligently and that we both understand each other thoroughly."

The COURT. You say the memorandum is the memorandum made of the conversation that took place on that date?

Mr. LEHRICH. Yes.

The COURT. Then why not show it to the witness and let him tell us about it.

Q. I show you Government's Exhibit 2-A. From whom did you get that?—A. I got that from Mr. Buedingen.

Q. When did you get that?—A. After we had the meeting. I think I was up there about August 6th. I got up there just as quickly, as close to the time they would see me, as possible.

Q. Was that a memorandum made after you had the conversation with Mr. Hammele and Mr. Buedingen, which you referred to before?—A. Yes; it was based on the conversation we had that day.

Q. The memorandum indicates that you talked about a Crookes price list. Will you tell us what that discussion was in detail?—A. Well, we were to pay Bausch & Lomb a price based on their sales prices to the wholesalers of Crookes lenses. They did not use the white price list. They used the Crookes price list.
783 That was the standard tinted lens at that time.

The COURT. I did not understand that.

(Answer read.)

The WITNESS. We wanted to know what the cost will be and they said: "We will supply you with the lenses finished in the glass we are making for you at Crookes Price list, one-third, ten and two.

By the COURT:

Q. When you say Crookes prices, you mean prices they charged for the manufacture of Crookes glass?—A. Prices they charged the wholesaler when they sold the Crookes lenses. The list was 33⅓ off. We paid 33⅓ and an extra 10 percent.

Q. You had a ten percent differential in your favor?

Mr. LEHRICH. No; against them.

Q. Wasn't it ten percent against you?—A. No; we got one-third, ten and two, whereas the wholesaler was paying one-third and two.

Q. You got yours ten percent cheaper than the wholesaler of Crookes lenses?—A. That is right.

By Mr. LEHRICH:

Q. The first thing discussed was the cost to you?—A. That is right.

Q. And you were to be charged the same they charged for Crookes lenses to their jobber, less one-third and ten percent?—A. No; less ten percent.

784 Q. In other words, the jobber got that one-third of the Crookes price?—A. Anyway we had only ten percent differential against other Crookes.

Q. Was there some discussion as to your initial requirements?—A. Yes; they wanted to know how much we felt we could sell, and my figures were rather high, and he said, "How much will you agree to buy?" and I did a little figuring and I told him I thought the way they were going we would use about 50,000 pairs a year, I think I said. I think that is what we agreed on. I guaranteed a minimum of 50,000 pair a year, and I think we used that in the first six months.

Q. Was there anything said in that conversation of how you would resell the lenses made for you by Bausch & Lomb?—A. No; we had already had a policy.

Q. You told him about that policy?—A. He had heard about it before when he did the grinding business.

Q. That was in June or May?—A. Yes; that was in May.

Q. Was there a new discussion of your policy, and a detailed inquiry what it was when you made this arrangement subsequent to July 30, 1924?—A. No. This was a question of making the glass, and he had the whole story from me when he first met me; before he undertook the grinding. The grinding was in May and that was in July.

785 Q. Is it a fair statement that you were discussing cost to you and the minimum quantity you would buy?—A. That is right.

Q. Mr. Singer, was there any discussion as to an arrangement to make the glass exclusively for you?—A. There was.

Q. Will you tell us just what that transaction was?—A. Well, before I brought up the formula specifications I told him my dad would want to know whether or not they would be making a glass like ours for themselves or anybody else; if they would, if it was putting my Dad's interest in the lenses, good will property and trade name in jeopardy, and he says, "We don't do those things up here. If we make it for you we won't make it for anybody else. Of course we sell colored lenses now and will sell colored lenses, but that particular type of absorption, a rose tint, we will make it for you and for nobody else."

Q. You were talking about a particular type which was being developed from the confidential specifications you furnished?—A. That is right.

Q. And you did not want them to use that in the making of glass for themselves or anybody else?—A. That is right.

Q. And Mr. Hammele told you they would not operate that way?—A. He told me, promised definitely and said, "We don't do things that way here," and I says, "That is why we came to you."

786 Q. And then you got, shortly thereafter, this memorandum from Bausch & Lomb, Government's Exhibit 2-A?—A. Yes.

Mr. Isseks. Your Honor, I would like to have counsel for Soft-Lite produce their copy. The copy which we have includes the original letter, and was furnished us not by Soft-Lite but by Bausch & Lomb.

Mr. Lehrich. We will give you the original.

Mr. Seymour. If your Honor please, counsel's comment just now as to where he got this document I understand is incorrect. I suggested earlier in the trial that an effort had been made not to confuse the thing by stating just where the copies came from.

The Court. Let us have it right now and have it over.

Mr. Lehrich. We objected at the beginning to that sort of comment from counsel. They furnished a photostatic copy in their interrogatories and in my interrogatories I said, "Same as in answer by Bausch & Lomb."

Mr. Isseks. My statement is still correct. We got it from Bausch & Lomb and nobody else.

The Court. I don't see that it is material, but he says he would like to see Soft-Lite's copy and they will produce it.

787 Mr. Seymour. The source is immaterial and therefore counsel should not advert to that——

Mr. Isseks. It is material I state.

The Court. In what respect?

Mr. Isseks. If it is a fact that Bausch & Lomb got back the original with the signed name on it, it may be material because there is a reference in there to a copy of a letter which I have been trying to get for a long time——

The Court. If there is a difference it is material.

Mr. Isseks. There happens to be a reference to a letter to Mr. Hammele, and I have been trying to get the letter referred to and we are going to try to get it until the end of this case.

Mr. Lehrich. The only reason he did not get that letter is because neither Bausch & Lomb nor we have been able to get the letter referred to in this letter inviting Mr. Singer up there.

The Court. There is no point getting excited about it.

Mr. LEHRICH. That is an improper reference to the situation, and casts a suspicion on the evidence. Everything he has in this case was furnished willingly and without subpoena, but on request by Mr. Isseks.

788 The COURT. You gentlemen should not argue the case now, nor must you assume that this court is in the slightest bit concerned about these pyrotechnics. They just take up time. I say that to both sides. All I know now that has happened, and the rest is just wasted breath, is that counsel for the Government has requested Soft-Lite's copy of Exhibit 2–A. Is it produced or isn't it?

Mr. LEHRICH. It is produced. Mr. Isseks has it.

The COURT. That is all that is of consequence and all the rest I suggest to you gentleman is wasted effort and you can spend your time more usefully on something else. Do you want to offer that in place of Exhibit 2–A?

Mr. ISSEKS. It is a photostat of the same document, your Honor, which counsel says he gave Bausch & Lomb. Counsel says he furnished it before the interrogatories. I did not know that.

The COURT. Now you are satisfied both are identical?

Mr. ISSEKS. All I have seen is the one side.

The COURT. In other words, what you really want is Bausch & Lomb's copy?

Mr. ISSEKS. That is right, because they furnished us a

799 photostat of what Soft-Lite had. I would like to have their copy.

The COURT. Very well, the request is made for Bausch & Lomb's copy of Exhibit 2–A.

Mr. ISSEKS. And Exhibit 2 as well.

Mr. SEYMOUR. We will make a search for it.

The COURT. There is no question that Exhibit 2 is the original written by Bausch & Lomb, but you want a copy of it.

Mr. ISSEKS. Yes; because maybe the letter referred to is there with it, and that is the letter I have been trying to get for several months.

The COURT. If there is any discrepancy between you, all right. Let us not waste any more time on it. Proceed with your next question.

Q. Mr. Singer, do you recall now what the Crookes price was on or about July 30, 1924?

The COURT. From whom to whom?

Mr. LEHRICH. From Bausch & Lomb to the distributor.

A. No; I do not.

Q. Approximately.—A. I presume they got about a dollar more than they got for the white.

The COURT. The witness does not seem to know and cannot answer.

Q. Do you recall what your price was of the Soft-Lite
790 lens made from Bausch & Lomb glass which was delivered to you as a result of this first arrangement made in August 1924?—A. As I stated before, they were Crookes prices net, less ten percent.

Q. Can you fix the price per pair?

The COURT. Mr. Lehrich, all you can ask him to do is to do the arithmetical calculation, and without having his recollection on it you could do that for me as well as the witness.

Mr. LEHRICH. I do not have that price. All I want to do is to get to your Honor that this first order represents so much money; 50,000 pair at so much a pair. I wanted to get the size of the transaction.

The COURT. Maybe we can have the actual record of the amount of that transaction.

The WITNESS. Well, the prices were about $1.30 a pair, I would say, on the average, for the single vision.

Q. To you?—A. Yes.

Q. From Bausch & Lomb?—A. Yes.

Q. That is less one-third?—A. No; that is net. I am talking about net. About $3.00 a pair net for bifocals. I thought you meant the specific scale of prices.

The COURT. About 80 thousand altogether.

The WITNESS. I should say about that. I think at the
791 time, your Honor, we figured it was between $75,000 and $100,000. They figured on pairs. They wanted to know how much glass they would be able to make and that is why I had to give a minimum order.

Q. Mr. Singer, after you started with Bausch & Lomb in 1924 did you continue to sell the same jobbers you were selling before?—A. We did, and still do.

Q. Did you continue to solicit stock retailers as you did before?—A. We did. No change.

Q. Did you continue your selling policy exactly in the same form at it was before?—A. Exactly, until 1933.

Q. Was any suggestion made to you by Mr. Hammele, Mr. Buedingen, or anybody else at that conversation about any change in the distribution policy?—A. No; it never came up.

Q. Was any suggestion made to you by any officer or representative of Bausch & Lomb from 1924 down to 1933 with respect to any change of distribution on your part?—A. No.

Q. Of method of distribution?—A. No; because we had a definite understanding that they make the best and we do the rest. We did not tell them how to manufacture and they did not want

to tell us how to sell. That was our definite understanding from the time we started business with them.

Q. Was there any suggestion made about a uniform
792 policy?—A. I do not know how that would come about. We had a uniform policy.

Q. By that you mean you were selling——A. Treating all wholesalers alike.

Q. Before 1924?—A. Certainly, and always had.

Q. And you continued to sell them the same way and treat them all alike after 1924?—A. That is right. Keep in mind, Mr. Lehrich, that some time about ten years ago to accommodate the smaller wholesaler who could not qualify for the full distributors' investment, we had a Class A for a while. We introduced that.

Q. You did not have that in 1924?—A. No. That was one of the modifications we made when we found that the new wholesalers we were soliciting were not in position to put in the then augmented initial stocks.

Q. You made that change——A. About in the Thirties.

Q. And in that respect your distribution differed from what it was prior to 1924?—A. That is the only one.

Q. Was that change made as a request made by Bausch & Lomb?—A. No. This was based on our own experience.

Q. Prior to the time Bausch & Lomb began to deliver glass to you and lenses to you under the arrangement made with Mr. Hammele early in August 1924, did you meet with any of the executives or other representatives of Bausch & Lomb and dis-
793 cuss your arrangement with Bausch & Lomb?—A. Very frankly, even though it may hurt the ego, I was not big enough to meet anybody there until I had done business with Bausch & Lomb for six months or longer.

The COURT. The answer is no. That is what all those words mean.

The WITNESS. Just about.

Q. To the best of your recollection when for the first time did you meet Mr. Edward Bausch?—A. I should say, and that would be a casual meeting going through the offices, perhaps a year from then or later.

Q. A year from when?—A. I would say about the latter half of 1925.

Q. When for the first time did you meet Mr. William Bausch? A. Subsequent to that time probably.

Q. How about Mr. Drescher?—A. Probably subsequent to that time.

Q. Subsequent to what time?—A. To the time meeting Mr. Edward Bausch. Let me tell you——

Q. You met Mr. Edward Bausch first?—A. Let me tell you how it came about——

The COURT. Don't volunteer to tell your counsel how he should proceed.

The WITNESS. No, but I could tell the story better if I could tell it in my own way.

794 The COURT. No, you let him bring it out in his own way. You know the old adage about anybody who acts as his own lawyer.

Q. Mr. Singer, to recapitulate, you met Mr. Hammele and Mr. Buedingen in July 1924?—A. May 1924.

Q. And early August, and you made an arrangement about making the glass and lenses?—A. Yes.

Q. Now between that meeting and the time when lenses were being delivered to you under that arrangement, did you talk with any of the executives?—A. No, I did not.

Q. Or any other representative of Bausch & Lomb?—A. No, I did not. I left on a trip.

Q. Now you say you met Mr. Edward Bausch for the first time about a year later?—A. Yes.

Q. He was the president of the company?—A. That is right.

Q. And you met Mr. William Bausch some time after you met Edward Bausch?—A. That is right.

Q. What was his office with the company?—A. He was a vice president. I did not know him at that time. I presume he was in charge of research or—I know he worked in the glass plant.

Q. And Mr. William Drescher, when did you meet him?—A. He was the treasurer. I met him I think subsequent to that time, too.

Q. That would be more than a year after you made this
795 arrangement?—A. Yes.

Q. Now the three names you just mentioned with the three top executives at that time of Bausch & Lomb?—A. Yes; they were the old folks.

Q. I understand there was another group of younger executives?—A. Yes.

Q. And in that group was Mr. Eisenhart?—A. That is right.

Q. And Mr. Taylor?—A. Yes.

Q. And Mr. Gordon Baird?—A. Yes.

Q. Any others?—A. Carl Bausch; Carl Halleuer.

Q. Did you talk with any of the five men just mentioned between August 1924 and the time when you started to get your first deliveries under that arrangement?—A. No.

Q. Did they have anything to do with you in connection with the sale of Soft-Lite lenses by Bausch & Lomb to Soft-Lite Lens

Company?—A. Nothing whatever. My dealings were exclusively with Joe Hammele.

Q. When for the first time did you have any contact with anybody else about this arrangement?—A. Well, I do not think I discussed that arrangement with any of the group, any of the elder or middle group. I had my arrangement with Bausch & Lomb and they were making our lenses and lens blanks, and when I met any of them Mr. Hammele would say, "Mr. Edward Bausch,
796 this is young Nat Singer," and that is all, just a social visit.

Q. After you started with Bausch & Lomb under this manufacturing arrangement, you had occasion to be in Rochester pretty often?—A. Yes.

Q. And on those visits were you then introduced to various of the personnel?—A. Yes. From time to time.

Q. Both executives and others——A. And employees, that is right.

Q. And when you say you met the employees or junior executives was it during one of those visits to talk business with Mr. Hammele?—A. Yes; but with them it was social mostly.

(Short recess.)

Q. Mr. Singer, referring again to Exhibit 2–A, the last paragraph in which this statement appears, "It is understood that we make the above Soft-Lite glass for them only." Was Bausch & Lomb at that time making rose-tinted glass?—A. No.

The COURT. You mean for anybody else?

The WITNESS. Were not making it at all.

Q. In other words, when they started to make rose-tinted glass or the Soft-Lite glass, that was the introduction in their line of a new product?—A. That is right.

Q. At that time were they making any other tinted glasses?—A. Yes.

797 Q. After this arrangement of 1924, did they continue to make those other tinted lenses?—A. Yes.

Q. And did they continue to sell them?—A. Yes.

Q. Mr. Singer, when you received your shipments from Bausch & Lomb, will you tell us the method of stocking, shipping, and advertising?—A. Yes; we got the shipments on our lens orders. Everything was shipped to us in New York City.

Q. When you say you got the shipment, did you give them requirements for a period as distinguished from requirements for a particular customer?—A. Oh, yes. We had to place lens orders in manufacturing cycles for making different types of lenses at different times of year. We had to anticipate by as much as five to seven months. If we guessed wrong, we had a surplusage.

Q. In other words, you would make out an advance manufacturing order?—A. That is right.

Q. And that was before you had any knowledge as to what you would resell?—A. That is right. We had to take that risk.

Q. When they made these lenses they shipped them to you in accordance with that factory order?—A. That is right.

Q. You carried the stock?—A. We carried the stock always.

798 Q. When you got orders from your wholesaler you shipped them out of your stock?—A. Yes; that is right.

Q. Now when you resold your lenses to wholesalers who assumed the credit risk?—A. We did.

Q. Did Bausch & Lomb salesmen solicit orders or sell any Soft-Lite lenses?—A. We do everything in connection with Soft-Lite outside of making the lens, and we assume the risk, we look up the credit, we do the selling, we do the advertising, we do the stocking, the shipping, the promotional work—everything. That is all we have to do; promote the sale of Soft-Lite lenses. All they do is make and ship to us. They do not ship to anyone except to us, except on specials.

Q. On that question of specials, I show you Government's Exhibit 19, a memorandum to Mr. Leo Schlenimer, from the lens sales department, and ask you whether that has reference to specials?—A. Yes. That is all Bausch & Lomb were ever permitted to ship for us.

Q. In other words, you notified Bausch & Lomb billing department and credit department and sales department——A. Not sales.

Q. Credit and billing?—A. Yes.

Q. Telling them which wholesalers may order specials for your accounts?—A. That is right.

799 Q. This notice of January 13, 1939, Exhibit 19, advises Bausch & Lomb that American Optical Company, E. W. Reynolds and R. Mohr & Sons were not authorized to—rather that no orders be accepted from them for your account?—A. That is right. We were no longer doing business with Reynolds or Mohr.

Q. In that connection, will you explain the removal from your distributor list of Reynolds, Mohr and California Optical Company?—A. When those wholesale businesses were purchased by American Optical Company, who were featuring a competitive absorptive lens——

Q. Let me interrupt. American Optical Company makes and sells a pink-tinted lens?—A. That is right.

Q. Which competes actively with your Soft-Lite lens?—A. Very actively.

Q. American Optical Company also owns its own wholesale distribution, is that correct?—A. That is correct.

Q. Now Mohr, Reynolds and California Optical Company sold out to American Optical Company?—A. Their businesses were taken over.

Q. And thereafter did they push Cruxite lenses?—A. Well, of course.

Mr. ISSEKS. I object, your Honor.

The COURT. Sustained. You mean you move to strike it out and I will grant your motion. When did this acquisition take place, roughly?

800 Mr. LEHRICH. We have the exact dates.

The COURT. Just give me the year.

Mr. ISSEK. The early part of 1939. The memorandum shows it.

Mr. LEHRICH. I went out of sequence here because of that special class.

Q. Now, Mr. Singer, after 1924, and after you started to sell Bausch & Lomb made lenses, did you issue any price lists?—A. Yes.

Q. What price lists did you issue?—A. Well, in the course of our business we issued different price lists from time to time.

Q. But shortly after 1924 did you issue any new price lists?—A. I think we continued to use the same price lists we had before. There was no reason to issue new ones.

Q. Prior to 1924, prior to the time you started with B. & L., did there come a time when you had in addition a distributors' price list or stock price list?—A. No; we just used the prescription price list from which we sold distributors.

Q. Did you continue to use them after you started with Bausch & Lomb?—A. Yes.

Q. Did you make any change in your price set-up or method of distribution after you started with Bausch & Lomb?—

801 A. No; continued as before.

Q. Were you requested to make any change?—A. No; it did not come up.

Q. Did you print any price list——A. No.

The COURT. Let him finish his question.

Q. (Continuing.) Did you print any price list suggesting to the retailer what he should charge the consumer after you consulted with Bausch & Lomb?—A. At no time whatever.

Q. In your entire history of your business you have not done that?—A. That is right.

Mr. ISSEKS. The witness has been asked the question twice. I have no objection except it takes time.

The COURT. Yes; I am aware of it.

Q. Was any suggestion made to you after you started with Bausch & Lomb for a revision of your prices and for an increase

of prices to the wholesaler or from the wholesaler to the retailer, or some suggestion of an increased and fixed price from the retailer to consumer?—A. No.

Q. Were any of those subjects discussed?—A. None of them.

Q. As a matter of fact, after you started with Bausch & Lomb from time to time you did make some price changes?—A. Yes.

802 Q. Have you with you a record of the prices that you charged prior to 1924 and the price changes that were made after 1924 from your company to the wholesaler?—A. I have such a record.

The COURT. Is it a schedule?

The WITNESS. Well, I have a list of all our price lists from the time we first started right through to date to see what the changes were in price and to see how far they went up or went down.

Q. Mr. Singer, what change did you make, and what was the first one after you started to do business with Bausch & Lomb?—A. Well, it was a downward revision.

Q. What was the first change?—A. Well, we had been selling single-vision compound Soft-Lite lenses at $3.50 less one-third, which netted $2.33, in February 1923. In March of 1925 we reduced our price to $3.00, less one-third, or $2.00 net.

Q. From $2.33 to $2.00?—A. Yes.

Q. What is the next change?—A. In April 1926, $3.50, less one-third, or a net of $2.33. That went up 33 cents.

Q. In what year?—A. In 1926. In November 1927 we went down again to $3.20, less one-third, or $2.13 net. In August 1931 we went down to $3.00, less one-third, or net of $2.00, and

802-A enlarged the foci range so that they got more——

Q. A wider selection for the same price?—A. A wider selection for the same price, yes; in April 1936 we introduced three columns and sold on a net basis and the price was then reduced to $1.95.

Q. The same lens went to $1.95?—A. That is right; in February, with the 25- and 50-pair columns introduced, we went down to $1.55 for the maximum quantity, and that is still our price.

803 Q. You talk about the two columns. Does that $1.55 price represent the same transaction that your earlier higher price represented?—A. That is right. The retailer got it for as little as $1.55 in 1939, and in fact up to date what cost him $2.33 before 1924.

Q. The prices you just read were the prices from the wholesaler to the retailer?—A. That is right.

Q. Do you also have the prices from your company to the wholesaler?—A. Yes; in February 1923, $3.50, less one-third and

25, or a net of $1.75. In March 1925, a net of $1.50. In April 1926, a net of $1.75. In November 1927, a net of $1.60. August 1931, a net of $1.50, and enlarged divisions, wider variety. April 1, 1936, a net of $1.45. In February 1939, $1.30 and a Plano-Meniscus added. I think that is still our prevailing price for regular single-vision compound Soft-Lite lens to distributors.

Mr. LEHRICH. I would like to offer in evidence a copy of that schedule.

The COURT. You have read it into the record. I don't know why you need it as an exhibit.

Mr. ISSEKS. I have no objection.

The COURT. As you wish.

Mr. ISSEKS. I have no objection.

The COURT. Very well, it will be received.

804 The WITNESS. I have the prescription prices.

Q. Suppose you give the figures on prescription and we will offer it all together.—A. February 1923, $4 for regular single vision compound Soft-Lite lens; March 1925, $4; April 1926,, $4. February 1930, $3.75–$4. August, 1931, divisions enlarged and $3.75 the top price. On April 1, 1936, $3.50–$3.75. April 1, 1941, $3.10; $3.35; $3.70.

The COURT. Those are the prices charged by your wholesalers to their prescription retailers?

The WITNESS. That is right.

The COURT. Are you marking them in evidence?

Mr. LEHRICH. Yes; I will offer all three in evidence as one exhibit; that is, the price list to the distributor, prices to the stock retailer, and prices to prescription retailer.

The COURT. Without objection they will be received.

(Marked "Defendants' Exhibit K.")

Q. Mr. Singer, from 1922 to 1933 what was the method of selection of retailers or wholesalers, if you know?—A. Well, he sold all of his customers.

Q. Was there any restriction, by declaration or policy or agreement——A. No.

Q. With Soft-Lite Lens Company, under which you
805 published a list of retailers to whom Soft-Lite lenses were not to be sold?—A. No.

Q. Did you publish any list of those to whom they were to be sold?—A. No, we did not know who they were selling to.

Q. No restriction of any kind with respect to retailers to be sold by the wholesalers?—A. None.

Q. They sold any retailers of their own choice?—A. That is right.

The COURT. What period of time is that?

Mr. LEHRICH. 1922 to 1933.

The COURT. I do not follow that answer, Mr. Lehrich. Perhaps you can get it clarified. I thought in the very earliest times there was an effort to exclude so-called nonethical practitioners, and that is the thing that was sold to the trade as far back as 1923.

Mr. LEHRICH. We had no license system, and published no lists and issued no instructions to whom they could or could not sell.

The COURT. I do not understand an answer given by this witness earlier, when he said he told the practitioners he was giving them an assured protection or some other thing.

Q. Mr. Singer, will you clarify or distinguish between your method of operation prior to 1933 and your method after
806 1933 with respect to selection of retailers?—A. We always told the wholesalers and the retailers that we were interested in developing the usage of our product by soliciting the better grade practitioners, the ethical type, because the fellows of reputation and character were the type who had the type of practice in which they were willing to get our product for a few cents more, and that we thought they may or may not be able to recover the difference. We told the retailers that was our policy. We were interested in doing the kind of practice-building and advertising that they would like. We would follow carefully the precepts and resolutions read at the op'thalmic societies, and we would use that and say we always play with that type of retailer. We told them at the beginning we will not solicit the type of practitioner that is not represented by you fine fellows; we would not solicit a nonlicensed refractionist; only those licensed by the State to practice optometry or medicine.

Q. Until 1933 you did not actually exclude anyone from use of your product, providing a wholesaler was willing to sell him?—A. Yes, sir. We did not know who he was selling to. We told him "If you are going to sell Soft-Lite get the right type of purchaser."

Q. However, Mr. Singer, if they got an order, either a prescription or stock order from any retailer, so far
807 as your company was concerned they were at liberty to fill it if they were satisfied with the customer?—A. Well, they did.

Q. Did you publish any list of any kind of retailers not to be sold?—A. No.

Q. Did you have such a thing as a removal from a list, or any other notification that you sent out to the effect that a retailer was not to be sold?—A. None whatsoever.

Q. Was there complete freedom of action, so far as choice of customer was concerned, by wholesalers?—A. That was entirely in the hands of our distributors. That is why we were particularly careful in selecting distributors.

Q. Other than your speeches and your talks to wholesalers and retailers about preferring the better kind of retailer, did you participate in any way in the selection of the retailer by the wholesaler?—A. No; because what we did——.

The COURT. Never mind the "because." That is an answer. But I wish he would explain the difference between that and the post-1933 practice.

Mr. LEHRICH. Your Honor, I am coming to the 1933 practice. I will clear that up.

The COURT. Don't let my suggestion cause you to digress.

808 Q. I show you Government's Exhibits 11 and 12, one called "Application for Soft-Lite License," and the other called "Signed Application for a Soft-Lite Licensee Privilege." Now you put those forms in operation in your business in about those years?—A. I think it was 1927.

The COURT. The one is dated 1927, and one 1928.

The WITNESS. That is right.

Q. Were those forms used in soliciting the orders from stock retailers?—A. Stock retailers.

Q. Prior to 1927 when a stock retailer ordered a stock of lenses, I understood you to say the wholesaler notified you of such a purchase and you notified all the other wholesalers?—A. That is right—in the territory.

Q. Starting with 1927, did you use these forms, Government's Exhibits 11 and 12, for that purpose?—A. Yes.

Q. Now you designated one as a license and the other as a licensing privilege?—A. Yes.

Q. Was there any other paper or document signed prior to 1933, other than these two papers?—A. No.

Q. Now, Mr. Singer, after 1924, when you started with Bausch & Lomb did you add any wholesalers to your list of distributors?—A. Yes.

809 Q. I show you this list and ask if it is a correct list, of all the wholesalers, added to date, the time of adding them, and the location of their various places of business [handing to witness]?—A. That is our current distributors list, and it is correct.

Q. Brought right up to date?—A. Yes, sir.

The COURT. It includes the original group less the eliminations?

Mr. LEHRICH. That is right.

The WITNESS. Yes. Those we do business with today.

Mr. LEHRICH. And we have the dates when we started to do business with them, and their locations.

Mr. ISSEKS. No objection.

The COURT. It will be received.

(Marked "Defendants' Exhibit L.")

Mr. LEHRICH. In that connection I want to direct your Honor's attention to the locations of various of those wholesalers, in the very districts of the various affiliates. I do not know whether we have the affiliates in the record, but I think they will be.

Q. In May, 1933, the record indicates that you announced to the trade your new licensee policy.—A. Yes.

Q. Before you issued that announcement did you have any discussions with Bausch & Lomb about it?—A. No. That
810 was another sales wrinkle of ours. We did not discuss our sales and advertising ideas with them. They were only concerned with discussions concerning prices we paid them for goods.

Q. You mean they were not concerned with the various methods of sale distribution?—A. They had nothing to do with that.

Q. Or the means that you employed to get your business?—A. No. I might tell them about it, that we got a new wrinkle that is working very well, and I might discuss it with somebody. That was our affair.

Q. Did you make an announcement of the licensee policy in 1933 as a result of any arrangement or agreement with Bausch & Lomb—A. None at all.

Q. Or as the result of any instructions of Bausch & Lomb?—A. That was our idea.

Q. Was it exclusively your own idea?—A. Yes.

Q. Starting in 1933 you announced to your trade, both wholesale and retail, that unless a retailer was on your list of licensees he was not to be sold any Soft-Lite lenses?—A. That is right.

Q. Had you used any system similar to that, in any form, prior to 1933?—A. No.

Q. This was a complete innovation?—A. Yes.

811 Q. Did you discuss the introduction of that system with your wholesalers?—Oh, sure.

Mr. ISSEKS. I did not hear the answer.

The COURT. He said yes.

Q. Did you get their ideas about it before you finally made the announcement?—A. Yes.

Q. Was the policy introduced as a result of any agreement with your wholesalers?—A. No.

Q. Was it introduced as the result of any agreement with your retailers?—A. No.

Q. However, you did get their views before you announced it?—A. Yes.

Q. Will you tell us what the reasons for the introduction of the policy were?—A. As our business grew more and more rose tints appeared on the market. In fact they got to a point in 1932 that we found it advisable to introduce what we call the guarantee cer-

tificate or protection certificate, in order to help protect the public and our customers and ourselves against palming off something that looked like Soft-Lite and sold as Soft-Lite. In 1933, or 1932, American Optical introduced Cruxite with a bang.

The COURT. Introduced it with what?

The WITNESS. With a bang—a big advertising hullabaloo, with a letter signed by the president of the American Optical Company.

812 Their competition is always tough, heavy and steep, and their Cruxite resembled our Soft-Lite in appearance, their claims were extensive, frequently coextensive, and their advertising was of a high grade. It was not as extensive as ours but they had I guess at that time about 150 wholesale branches, and they could do a swell selling job. Titmus Optical Company——

Q. Let me interrupt you at that point, Mr. Singer. After you got started in 1924 with Bausch & Lomb and your business grew, did other tinted lenses come into the market under trade names?—A. Oh, continuously.

Q. Prior to 1924 I think you said the only tinted lens sold under a trade name was not yours, it was Crookes. Is that correct?—A. No. There were Crookes lenses, there were various trade-name lenses.

Q. There were?—A. Yes.

Q. With respect to rose-tinted lenses, at some time after 1924 was there an influx of various trade names?—A. Yes; they would use the same imported glass but sell it under their own trade names as a rule. You heard that from—Joe Ramel quoted half a dozen. There must have been right to date 15 or 18 that were advertised, and I suppose every wholesaler will sell it under any pet name he likes. But we had created a demand for rose-tint glass, and they were coming in hot and heavy.

Q. As your sales increased you continued to advertise at a greater scale each year?—A. Yes; and put more men on.

813 Q. Did the sales of rose-tinted lenses as a whole increase?—A. Very apparently.

Q. During that period?—A. There were more of them, and more of them sold. We were creating a market for it.

Q. Did you begin to get some complaints about that time about imitations and substitutes?

Mr. ISSEKS. If there were any in writing, your Honor, we call for the production of the written document.

A. The answer is yes.

Q. Prior to 1933 did you furnish advertising material to retailers other than stock retailers?—A. Well, our material was distributed through the wholesaler to all of his customers. We ourselves supplied advertising material only to the stock dealer.

Q. The stock dealer was on your mailing list?—A. That is right.

Q. Because you had a record of your stock dealers?—A. That is right.

Q. The prescription dealer was not on your list at all?—A. No; and we were seeking some way of promoting the usage of our product to that very large group that we had no contact with.

Q. Did you do any mailing of advertising material or promotional material to the prescription dealers prior to 1933?—A. Direct?

814 Q. Yes.—A. No; we had no list.

Q. In that connection, was the question of getting a mailing list and a list of the prescription dealers considered before you put this policy into effect?—A. There were several additional advantages. We were also coming out with a practice builder.

Q. That was the house organ?—A. The house organ. We had no way of getting a mailing list other than the limited number of stock dealers, and it was not easy to get our wholesalers to give us a list of his customers.

The COURT. Do you mean to tell me that there were not on the market then, as there are today, organizations who will send you mailing lists of every conceivable variety?

The WITNESS. Your Honor, as we found in using them, they are wasting time and money. We were soliciting the better grade practitioner, and they did not know them at all. They just took the names of people.

Q. You were concerned then with the names of people buying from your wholesalers?—A. Yes; and wanted to build up a greater usage on their part.

Q. A list of retailers would not pick out those interested in your product?—A. No; certainly those buying from the American Optical and others would not be prone to use our product. This was a golden opportunity to get a mailing list, and this was one way we had of getting it.

815 Q. Was this primarily a system for the selection of customers, or one to enable you to fix prices?

Mr. ISSEKS. I object.

The COURT. I will sustain the objection. Let the witness say what he did. I think we have had enough of the mental operations which entered into the decision. There having been no objection, I permitted you to go forward, but I think we have had too much speculation as to the mental reasoning. I think we ought to get into the record more about what was done.

Q. As a result of the introduction of this policy in 1933 did you in any way change your method of distribution?—A. No.

Q. Did you change your prices to the wholesaler or the suggested prices from the wholesaler to the retailer?—A. As I read, only downward.

Q. Was there any price change coupled with the introduction of the——A. No.

Q. Of the license system?—A. No.

Q. Mr. Singer, before 1924 you did business with all of the companies which subsequently became affiliates of Bausch & Lomb; is that correct?—A. If they were in business at that time we did.

The COURT. Mr. Lehrich, he had not yet told us how he
816 got that mailing list that he said he was eager to get. I assume you are now going to some other subject.

Mr. LEHRICH. No; I am coming back to that.

The COURT. You are coming back to that same thing? Very well.

Mr. ISSEKS. Your Honor, I do not want to interrupt counsel, but it seems to me that while counsel has an exhibit he can look at, the one exhibit he shows me shows they were not doing business with one company. I say this for completeness, that is all.

Mr. LEHRICH. That was a merger.

Mr. ISSEKS. I did not know that.

Q. Mr. Singer, some of your customers became affiliates of Bausch & Lomb?—A. Yes.

Q. And others were merged in companies which became affiliates of Bausch & Lomb?—A. That is right.

Q. That is correct, is it?—A. That is right; yes.

Q. All of the companies which became affiliates were customers prior to 1924; is that correct?—A. Yes; either in their present form or in the company that combined with them. For example, G. M. Smith was a wholesaler of ours from the very beginning. He was merged with Colonial.

Q. After they became affiliated, or after they were merged, were they treated in any respect any differently from the manner in which they were treated before?—A. No.

Q. Were all of your wholesalers, whether they were
817 affiliates or not, treated in exactly the same way?—A. Always.

Q. Did any of your wholesalers who became affiliates of Bausch & Lomb get any special discounts or special breaks or concessions of any kind?—A. The principal advantage of a policy——

The COURT. Just say yes or no.

The WITNESS. No.

Q. Did any of the affiliates participate in any discussions with you about the introduction of the 1933 license system?—A. Yes; as wholesalers.

Q. Well, to what extent did they participate in such discussions?

Mr. SEYMOUR. If your Honor pleases, insofar as testimony about conversations is offered against Bausch & Lomb, I must object to it.

Mr. ISSEKS. I have no objection, your Honor.

The COURT. The objections of the character you have already made you have a reservation on. Any new objection you have I will overrule.

Mr. SEYMOUR. Exception.

A. We discussed the introduction of the license plan with all of our wholesalers.

Q. Did you discuss it with affiliates separately?—A. No, we do not have that kind of differentiation. They are
818 wholesalers of ours.

Q. When you mentioned discussing with wholesalers, do you mean by that executives of the affiliates as well as the wholesalers?—A. Yes; we regard them all alike.

Q. The independent wholesalers?—A. They are all alike to us.

Q. In discussions you treat them all alike?—A. All alike.

Q. Did you introduce the license system in 1933 as the result of any arrangement with any of your wholesalers?—A. No; definitely, no.

Q. Now, will you explain to his Honor what you meant by acquiring a mailing list, as one of the incidents of this license system?—A. Well, we were approached by a number of our wholesalers whose competitors were promoting more and more actively the sale of lenses that looked like ours and sold for less, with such comments as "It is hard to tell the difference, the retailer says he can get away with it, the public does not know the difference; what will we tell him?" "What shall we tell him?" I said, "Well, you know what I told you at sales meetings. A parrot can say 'It is just as good,' but he does not know what he is talking about. The other products hide their source of supply."

Q. Mr. Singer, I asked you simply about a mailing list.
819 After you sent out the forms mentioned in your May 1933 letter did you get back the forms with the names and addresses?—A. Yes.

Q. Of the licensees?—A. I thought you wanted to know how we sold them on the idea of doing that.

Q. No.

The COURT. To whom did you send those forms; did you send them to the wholesalers or to the retailers?

The WITNESS. We sent it to the wholesalers and asked them——

Mr. LEHRICH. The letter indicates that.

The WITNESS. Yes; and asked them to go to their retailers, the good Soft-Lite users, and ask them to sign up, sign a license.

Q. Did they sign up their existing customers?—A. That is right.

Q. And they gave you the forms?—A. Yes.

Q. Those gave you their stock and prescription customers?—A. Yes; those presumably using Soft-Lite lenses.

By the COURT:

Q. After that they were not able to sell to anybody except those on your list?—A. Well, we had to modify that a little bit.

Q. But that was the general idea?—A. Those they could not get to sign they appointed.

820 Mr. LEHRICH. Later on we simply had appointments.

The WITNESS. That is all.

By Mr. LEHRICH:

Q. Mr. Singer, since we were in court the other day did you make inquiry as to the method used in your license system after the Federal Trade Commission ruling in 1938?—A. Yes.

Q. It appears that the new form now in use was introduced in February 1939.—A. Yes.

Q. From July 1938 to February 1939, did you continue to use the old form?—A. With a rider.

Q. Is this the rider that was attached to each form that was sent out during that period [handing to witness]?—A. That is right. As we told the Government we would do.

Q. That is Government's Exhibit 54?—A. Yes.

Q. For that period of about six months you continued to use the old form and attach the rider?—A. That is right.

Q. Which is Exhibit 54. And then you printed your new forms which are now in existence?—A. That is right.

Q. Mr. Singer, in your stock price list, pages 17 to 20, you list qualifications of licensees; you know that, don't you?—A. Yes.

Q. Under those qualifications, do you exclude as licensees jewelers?—A. No.

Q. Do you have any licensees who are also jewelers?—A. Yes.

821 Q. Do you have many?—A. A number, and some of our very largest users.

Q. Do you have any low-priced dealers?

The COURT. What does that mean?

Q. Do you have any dealers located in poor neighborhoods?—A. Yes.

Q. Where the prices received for their general line of merchandise are considered low?—A. Yes.

Q. How do you choose, with respect to the question of price, those of your retailers that you appoint and those of your retailers that you exclude—or does that enter into it in any way?—A. No. That may become an indication. That depends on how he handles the word "price." Relatively low prices combined with the use of quality merchandise and fair dealing make a retailer a very good prospective Soft-Lite user. Advertising low prices and utilizing inferior merchandise sold as first quality merchandise, or

using it as bait, makes that kind of a price seller obnoxious to our type of distribution.

Q. Taking two retailers in this city, one for instance on Madison Avenue and one on Canal Street, the price levels for their general line of merchandise will vary?—A. Much.

Q. And one will be much higher than the other?—A. Much.

Q. Do you license both classes?—A. Yes; because in
822 their vicinity and their neighborhood those are the prevailing prices, and they are much lower than up on Fifth Avenue. For example, my father had stores, one in the Bronx and one in Harlem. Those were not the prices of M. Singer or Gall & Lempke, or those on Fifth Avenue. His scale was low, but fair for that neighborhood.

Q. For the service he was rendering, for his establishment?—A. Yes. He was not expected to give the fine adjustments that Gall & Lempke would give. They were commensurate. They had nothing to do with us.

Q. Do you fix any minimum price which a retailer must charge or get for Soft-Lite lenses or any others of his products before he would qualify as a license?—A. No; we would not know what would be a right price. What you refer to is the price prevailing in his territory or vicinity, and that is general prices.

Q. Is the term "price-cutting" confined to a retailer who sells below some other retailer?—A. Yes.

Q. Or is it confined, rather, to a class of practices?—A. It is a type of practitioner. That is what I said, price can be an indication. The type of practitioner who offers destructive competition to a fellow practitioner. You have that in every line. You have that with dentists, and professional dentists. That
type of practitioner solicits not on service but on price.
823 Very frequently that is an alarm warning. Either that type of retailer is not making a good living, and is not likely to be a good user of a product like ours, and has to resort to price advertising, or he may have been using that as a bait appeal.

Mr. LEHRICH. If your Honor please, I would like to offer in evidence the complete classification and résumé of all the removals of licensees which appear on the list which Mr. Isseks offered in evidence, giving the name of the retailer, the date when he was removed, at whose request, and the reason which appears on our licensee card. Subject to correction I also have a summary of the reasons as they appear, the number for inactivity, the number for price-cutting, the number as undesirable, and so forth.

The COURT. A convenient collation, you mean.

Mr. LEHRICH. Yes, your Honor. Instead of putting in two or three thousand I have taken abstracts from those cards, and Mr.

Isseks has copies of all the cards and if he finds any error I will correct it. I have had it done in our office by our clerks.

Mr. ISSEKS. Subject to an opportunity we may have of checking on it or making any corrections——

The COURT. And subject of course to your right to use it for the purpose of cross-examination.

Mr. LEHRICH. Oh, of course.

824 Mr. ISSEKS. Yes. I would like to have an opportunity for my associates to check it. We have never seen this document before.

Mr. LEHRICH. It was only prepared since you put in the few price-cutters: I prepared the rest.

The COURT. Subject to correction, and without objection, then, it will be received.

Mr. SEYMOUR. Your Honor, this seems to fall into the same category as the cards themselves. I do not object to it as a summary, but I object upon the same grounds I urged before, and reserve my right to press that on a motion to strike out.

The COURT. Very well.

(Marked "Defendants' Exhibit M.")

By Mr. LEHRICH:

Q. Mr. Singer, when your company introduced this license system in 1933 you told your wholesalers in pretty good detail the kind of licensee you wanted appointed?—A. Yes, sir.

Q. And thereafter you relied, didn't you, on their recommendations?—A. Entirely.

Q. In other words, when you got a recommendation from a wholesaler to put a retailer on the list, you followed that recommendation pretty generally, didn't you?—A. Yes; unless

825 we knew from our own knowledge and information that it was not the type of account that would appreciate and really use Soft-Lite to advantage we would take it for granted it was all right.

Q. Thereafter if the same wholesaler who appointed the retailer, recommended his appointment, recommended his removal, you likewise relied on his recommendation?—A. That is right.

Q. You have no facilities, I assume, for personal contact with all the retailers throughout the country?

Mr. ISSEKS. Objection.

The COURT. Sustained. The form of the question.

Mr. LEHRICH. I thought Mr. Isseks wanted to save time.

Mr. ISSEKS. Your Honor, I have sat here when I should have stood up and made objections by the hour.

Mr. LEHRICH. The same goes for both of us.

The COURT. The form of your question was objectionable. We will take the recess here.

Mr. ISSEKS. Your Honor, I would like to make a request of counsel, and I would rather make it in open court. We have already requested counsel for Soft-Lite Lens Company to produce records showing when the Optical Service Corporation issued certain stock certificates to nominees for the beneficial interest of Messrs. Wahlgren and Hubbell. We are trying to get that
826 date, and I would like to have any pieces of paper showing it.

Mr. LEHRICH. Your Honor, may I interrupt. If Mr. Isseks wants to make requests of me and repeat them on the record, I prefer that he make them on the record only and I will respond to them.

Mr. ISSEKS. We made the request the first day in open court, and we have not had it yet. I think that is nine days ago.

The COURT. You do not want it spread on the record, you mean? It does not mean a thing as far as I am concerned.

Mr. ISSEKS. We also ask counsel for Bausch & Lomb to produce the annual reports for 1937, 1938, 1939, and 1940. I now make the request of Bausch & Lomb to produce their corporate minutes, whether board, executive committee, or operating committee, of Bausch & Lomb, for the years 1924 and 1925.

I would like to have counsel for Soft-Lite Lens Company produce a memorandum similar to the one they gave us this afternoon, showing shipments to White-Haines, Mr. Hubbell's company, for the period 1922, 1923, 1924, and 1925. Reference was made during the cross-examination of this witness to complaints prior to 1933. If they were in writing we would like to have them.

826-A Mr. LEHRICH. We have no correspondence going back that far, or that type of material.

The COURT. The request is on the record, and when you are prepared you can either comply with it or make a statement on the record as to why you do not supply it.

(Adjourned to Thursday, September 25, 1941, at 10:30 a. m.)

827 UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY, ET AL.

NEW YORK, *September 25, 1941,*
10:30 a. m.

Trial resumed.

Mr. ISSEKS. The Government calls Dr. Lippmann, your Honor.

The COURT. Are you going to suspend the cross-examination of Mr. Singer?

Mr. ISSEKS. We arranged that yesterday, your Honor.

The COURT. Very well.

Mr. ISSEKS. Your Honor, Mr. James is going to examine the witness.

FREDERICK M. LIPPMANN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. JAMES:

Q. Dr. Lippmann, in what business are you engaged?—A. I am an optometrist.

Q. Where is your office?—A. At present at 292 Madison Avenue.

Q. And it is your own office?—A. That is right.

Q. How long have you had your own office?—A. Just
828 about a week.

Q. Where were you before that?—A. I was employed at the same address by the Socialized Optical Plan.

Q. And when did you go to work for them?—A. About two years and seven months ago.

Q. That would be some time in 1939?—A. Some time in 1939.

Q. And before that where were you?—A. At the Hotel St. George in Brooklyn.

Q. And you were in private practice at the Hotel St. George?—A. That is right.

Q. Do you have a Soft-Lite license?—A. I believe it is still in force.

Q. And when did you get that license?—A. Around August or September of 1937.

Q. And at the time you got that license did you talk to any Soft-Lite representative?—A. I did.

Q. And that was at the time you got the license in 1937?—A. That is right.

Q. And do you remember the name of the man you talked to at that time?—It is somewhat difficult for me to recall it but I believe it was either Steer or Starr or Stiers or Stair. I cannot quite remember the name.

Q. And was there anyone with you at the time you talked to this man?—A. Yes.

829 Q. And who was there?—A. My brother.

Q. And what was the conversation that you had, as nearly as you can remember?

Mr. LEHRICH. I object on the ground that the person with whom this man talked has not been identified.

Mr. JAMES. It has been identified to the best of the witness's ability.

The COURT. I will let you ask him another question to make sure he was an official or representative of the defendant company.

Q. Did you know this man who called on you that you have not been able to identify was a Soft-Lite representative?

Mr. LEHRICH. I object to what he knew, your Honor.

The COURT. How did he know, is what you want.

Q. How did you know that this man was a Soft-Lite representative?—A. Well, he told me about the advantages of selling Soft-Lite lenses.

Mr. LEHRICH. Now, I ask that that be stricken out on the ground that it certainly would not be binding on us until the man is personally identified. I am not being technical about this, but the man mentioned several names, none of which are in any way identified with our company.

830 Mr. ISSEKS. There is a Stiers, your Honor, I submit, and the record shows it, and there were several pieces of paper written by him.

Mr. LEHRICH. Mr. Stiers was always an inside clerk and Mr. Singer testified he was a clerk in the office.

The COURT. Is it possible to get this person identified any better?

Mr. JAMES. No; it is not, your Honor.

The COURT. I will tell you what you do. I will sustain the present objection but you develop the circumstances of the visit with sufficient detail so as to make it probably the basis for an inference that he was talking to a representative of the defendant's office. I will not require you to produce necessarily the name of the man if he can be identified otherwise, and if it is clear that he was a representative of the defendant's office. If he cannot do that I would have to exclude his testimony. Develop the arrangements made for the visit or correspondence or introductions and circumstances of the visit, all of which might provide a proper basis for the inference that he was talking to a representative of the defendant's office. Otherwise he might have been talking to a total stranger.

Q. At the time that you had this conversation did you have your license?—A. I did not have the license at the time I spoke to this representative that I have referred to.

831 Q. And how was this conference arranged?—A. My brother brought him to me.

Q. And who is your brother?—A. My brother was employed with Colonial Optical Company.

Q. And did your brother introduce this man to you?—A. He did.

Q. And what did he introduce you to him as?—A. He introduced him as——

Mr. LEHRICH. I object on the ground that what his brother said would not be binding on us.

The COURT. I will overrule your objection.

Mr. LEHRICH. Exception.

A. (Continuing.) He introduced him to me as a representative of Soft-Lite Lens Company, and if I can recall this incident I believe on his second visit to me he presented me with a pipe with "Soft-Lite" engraved on it, and he said that Mr. Singer had brought it from Paris on one of his visits.

Mr. LEHRICH. Now, if your Honor please, I still move to strike out all this on the ground that the person has not been identified and that the statement by the witness here that the man was a representative of the Soft-Lite Lens Company is not binding on us and is no proof in this case.

832 The COURT. That is right, but I will take it subject to the production of the brother if the matter still remains in issue by the time the witness is through; subject to the connection of the brother's testimony that he knew him otherwise to be a representative of Soft-Lite.

Q. What is your brother's name?

Mr. SEYMOUR. Of course this is all subject to my continuing objection.

The COURT. Subject to your continuing objection.

A. My brother's name was Harry G. Lippmann.

The COURT. You say "was"?

The WITNESS. Yes; he is deceased. He passed away last year.

Mr. LEHRICH. Then under the circumstances, since it is apparent the testimony cannot be connected, I move to strike out all the testimony of this witness.

The COURT. I will sustain so much of your motion as requests that the portion about his brother's comment be stricken out and that part will be stricken out only, but I will leave in the portion about his bringing the pipe and other incidentals which may still afford an inference that he was talking to a Soft-Lite representative.

Q. You said that at the time this conference was held you did not have your soft-Lite license?—A. No, sir.

833. Q. And was there a lafer conference with the same man after you got your Soft-Lite licenses?—A. Yes, sir.

Q. And how did you get your Soft-Lite licenses? Was it mailed to you or delivered personally?

The COURT. Before you go into that I think the defendants are entitled to some identification of the man. Can you describe him physically?

The WITNESS. He was short, fair.

Q. And how old was he approximately?—A. Oh, I would say about 28 to 32.

By the COURT:

Q. Did he bring with him any material or literature or a portfolio of advertising material that would indicate he came from the Soft-Lite office?—A. Oh, yes; he had some data with him with regard to Soft-Lite lenses.

Q. What kind of data, printed or written?—A. Printed data.

Q. Was it advertising material?—A. I believe so. He had a portfolio with him.

Q. Did he tender you any papers for signature or order blanks? A. Not at that time.

Q. On the second visit?—A. No; he did not. My brother gave those to me for sighature.

Q. Do you know where your brother obtained those?—A. I believe he obtained them from Colonial Optical Company.

834 Q. But not from this gentleman?—A. I could not say.

Q. Did he bring any samples of lenses with him?—A. No, sir.

Mr. ISSEKS. Your Honor will recall the Colonial Optical Company is an affiliate and they can easily check whether or not this gentleman's brother was a salesman at the time, and whether or not the Colonial Optical Company did recommend this gentleman to be a licensee. As a matter of fact we call for the production of his card right now. They have it in the courtroom.

The COURT. That is not the issue right now. The issue is as to this alleged representative of Soft-Lite in order to assure ourselves that he was talking to a representative of Soft-Lite and not to some stranger or private agent or private solicitor. It is not very likely, but at least we ought to have in the record sufficient to afford a basis for that kind of inference. I will let you proceed, Mr. James. I will overrule Mr. Lehrich's objection for the present.

835 Q. How was the conference arranged?

Mr. LEHRICH. Which conference?

Mr. JAMES. The first conference.

A. There was no particular arrangement. My brother just dropped in with this gentleman that I referred to, and I had set the office up there, and we discussed about what we would handle, or what I would handle in the office, with regard to the type of lenses and type of material.

Q. And then what was the arrangement for the second conference that you had?

Mr. LEHRICH. Just a minute. Is this a statement now by the representative?

The COURT. There has been no statement by the representative testified to.

Mr. LEHRICH. But he asks what was the arrangement for the second conference.

The COURT. His brother and this gentlemen just dropped in, and there was no arrangement.

Mr. LEHRICH. I am speaking of the arrangement for the second conference.

The COURT. He is asking whether there was an arrangement for a second conference.

Mr. LEHRICH. I will withdraw the objection to that question.

Q. Was there an arrangement for a second conference?—
836 A. Well, I believe there was. Of course we had the second conference, and I do not know whether there was any definite arrangement made for it but we did have a subsequent conference.

Q. And your brother was present at the subsequent conference?—A. Yes, sir.

Q. When this salesman called on you at the first conference did he bring any literature from Soft-Lite?

The COURT. He has already said yes.

Q. At the second conference did he bring literature?—A. Yes; he did.

Q. And did he bring any plaques or notices that you were a Soft-Lite——

Mr. LEHRICH. If your Honor please, I object to the form of the question, because I think it is leading—and particularly where there is such a sharp question about identification.

The COURT. Yes; I think the objection is well taken. He is your witness, so do not lead him.

Q. Did he bring anything else besides the literature at either one of the conferences?—A. Yes; he brought some sales material, and he spoke to me about the advantages of selling Soft-Lite lenses, and why I should handle Soft-Lite lenses, and the advantages of being licensed for Soft-Lite lenses.

837 Mr. LEHRICH. If your Honor please, I still move to strike out what the representative said, in view of the fact that the representative has not been identified with respect to any statements made by him up to this point.

The COURT. I will overrule your objection, subject subsequently to a motion.

Mr. LEHRICH. Exception.

Q. When was the first conference that you had, approximately?—A. August or September of 1937.

Q. And what was said at that conference, as nearly as you can remember?

Mr. LEHRICH. I make the same objection.

The COURT. The same disposition.

Mr. LEHRICH. Exception.

A. In the discussion he said that if I featured the sale of Soft-Lite lenses as against other tinted lenses, that I would not be subject to competition; in other words the price was maintained throughout; by virtue of that price maintenance that they maintained their licensees; and it would be a very definite advantage, because the lenses, in their sale we could specifically state that they were Soft-Lite lenses and there was a price protection on them. In fact he said they were price-protected.

Q. Did he say anything else?—A. He said nobody else would sell them for any less than I would sell them; and that
838 they maintained the price on them very firmly, that is the reason why it was necessary to get a license for them.

Q. What was the conversation at the second conference, as nearly as you remember?

The COURT. When did that take place? How long after?

The WITNESS. Probably two or three weeks after.

The COURT. Very well, proceed.

A. Well, we went over the situation. I believe that the reason for his dropping in at the second or third conference was due to the fact that he accompanied my brother on his travels to the trade, and in that second conversation he said that the license would be all right; either he gave me the license or he told me it would be all right, I cannot remember that; and he said—well, that was about the result of the second conversation. I can't quite recall any more about it.

Q. At the time that you were given the license were you given any other papers?—A. Well, I believe I had some arrangement made to have some lens wipers made with the Soft-Lite signature on them, and I believe I had some material in the office, either a card signed or something that identified me as a Soft-Lite dispenser.

Mr. LEHRICH. If your Honor please, I object to the de-
839 scription by this witness of written documents, wipers and other material, because the material itself would be the best evidence. I would not ordinarily make that objection, but in view of this entire question of identification I ask that all of that testimony be stricken out, in the absence of production of those papers.

The COURT. I will overrule your objection with respect to the wipers, but I will sustain you with respect to the character of the identification made. That was entirely too vague. That portion will be stricken out.

Q. Did you get any other material at the same time or subsequent thereto, from the Soft-Lite people?

Mr. LEHRICH. I object to that. If counsel means from the agent or direct from the company, I think we ought to know.

The COURT. He has not specified. Will you reframe your question.

Q. Who gave you the license, or how did you get the license?—A. I can't remember.

Q. You don't remember whether it was mailed or——A. I don't remember whether it was mailed, or I don't remember whether it was delivered to me.

Q. And you do not remember whether there was any other material besides that which you have listed, that was given to you at that time?—A. No; I don't remember.

Q. Did you ever have a retail price list?—A. I believe
840 it was included in the price list.

Mr. LEHRICH. I object.

The COURT. Whose retail price list do you mean?

Mr. JAMES. I was finding out whether he ever had a retail price list, your Honor.

The COURT. Do you mean one of his own?

Mr. JAMES. I will reframe the question?

The COURT. Yes; reframe it.

Q. Did you ever get a Soft-Lite retail price list?—A. If I recall the——

Mr. LEHRICH. I think that calls for a yes or no answer.

The COURT. That is right.

Q. Answer yes or no, to the best of your ability.

The COURT. I will let you explain it after you have answered yes or no; but in the present instance your answer would be yes or no.

A. Yes.

The COURT. Or I don't remember.

The WITNESS. Yes.

Q. Whom did you get that retail price list from?—A. From the Soft-Lite Lens Company.

Q. And how did you get it from them?—A. I don't understand what you mean.

The COURT. By mail or special delivery or how?

841 The WITNESS. I can't remember.

Q. And did you get a list of customers——

Mr. LEHRICH. If your Honor please, I think all of these questions are objectionable. In every question he is asking for the contents of some writing. Counsel has those papers, and anyway if they are identified with our company I would have no objection to them. But I think it is highly improper, with a witness who is so indefinite about the conversation to begin with, to have him

describe certain papers and get into the record such papers through conversations about price maintenance.

The COURT. I will sustain your objection.

Q. Do you have this retail price list at the present time?—A. No; I do not.

Q. Have you looked for the retail price list?—A. Yes; I have endeavored to find it. I have not been able to find it.

The COURT. Let me ask counsel what they are getting at now. I assume that you brought this witness here to testify to something about price maintenance.

Mr. ISSEKS. That is right, your Honor.

The COURT. Then why not get to the heart of it? Why the preliminaries? We know that there have been price lists published.

Mr. ISSEKS. We are talking about price lists
842 from retailer to consumer.

The COURT. Certainly I did not gather any such thing from the question of counsel. Heretofore a price list has been identified which indicated the prices paid by the wholesaler.

Mr. ISSEKS. It has been our fault.

The COURT. If you mean whether he ever had a written price list of prices to be charged the consumer I think you ought to ask him the question.

Mr. ISSEKS. I think every question that is asked there will be objection to. I want to point out that the witness is still a licensee operating under the system. They have all the chance in the world to find out who the man was who went to see him, because they have all the records, not us.

The COURT. I think that would be imposing too great a burden, upon a company of some magnitude. But I have overruled that objection and you need not be concerned with that.

Mr. ISSEKS. I understand.

The COURT. What I would like to do is to get down to the heart of the issue. We are not going to use this witness to lay the whole groundwork, which has been attempted to be laid for the past week.

Mr. ISSEK. No; it is all about prices from
843 retailer to consumer.

The COURT. Then get down to the question.

Mr. LEHRICH. I understand the purpose of these questions is to have the witness testify that he had a price list giving him the prices to be charged the consumer, a price list furnished by Soft-Lite Lens Company.

The COURT. I do not know what it is intended to have him testify. I only know what the questions are. Maybe the answer is no, or yes, or I don't remember.

Q. Did you get a retail price list listing the prices to be charged to the consumer?

Mr. LEHRICK. If your Honor please, I object to the contents of a document unless the document is produced.

The COURT. He has not identified a document yet. He is asked if he received one.

Mr. LEHRICH. It is in the question, "Did you get a retail price list listing prices to be charged to the consumer?"

The COURT. I will overrule the objection. Your answer is yes or no.

A. Yes.

The COURT. Very well, now you ask him to produce it, I assume.

Q. And where did you get that price list?—A. From the Soft-Lite Lens Company.

844 Mr. LEHRICH. I object to that. Saying that he got it from Soft-Lite Lens Company is too indefinite.

The COURT. I overrule your objection.

Mr. LEHRICH. Exception.

The COURT. I want to get the meat of it.

Q. How did you get that price list?—A. I can't remember how it was delivered to me.

Q. Do you have that price list now?—A. No.

Q. Was it a typewritten price list?—A. Yes; it was typewritten.

Q. And did you use that price list in your business?—A. I used it for a short——

Mr. LEHRICH. I make the same objection, your Honor.

The COURT. Overruled.

Mr. LEHRICH. Exception.

The WITNESS. I used it for a short time and I discarded it.

By the COURT:

Q. By using it you mean that you were guided by the prices?—A. Guided by the prices.

Q. That were indicated in it?—A. That were indicated in it.

By Mr. JAMES:

Q. And you stated that you used it for a short time and
845 then discarded it. How long a period did you use it?—A. Probably about five or six months.

Mr. ISSEKS. Your Honor, we call for the production by Soft-Lite Lens Company and by Bausch & Lomb of all correspondence in connection with this gentleman becoming a licensee; because we would like to identify this man ourselves, this gentleman who was there. May I ask the witness one or two questions?

The COURT. Certainly.

By Mr. ISSEKS:

Q. I am going to suggest some names to you. Was the gentleman who came to see you a gentleman by the name of Slosson—S-l-o-s-s-o-n?—A. No.

Q. Was his name Summers?—A. No.

Q. Was his name Bernhardt?—A. No.

Q. What is your best recollection of what his name is?—A. My best recollection is it was either Stark or Steers or Stair, either one of those three. Those are the things that come to my recollection most vividly. Further than that I could not identify him.

Q. As far as you knew, what was your brother's connection with the Colonial Optical Company?—A. He was employed by them.

Q. In what capacity?—A. As a salesman.

Q. For how long prior to the time that he came there in August 1937?—A. It would be about seven or eight months.

846 Q. Did he continue his employment thereafter?—A. Yes; he was with them about a year and eight or nine months before he passed away.

Q. And he was employed by them when he died?—A. That is right.

Mr. LEHRICH. If your Honor please, I move to strike out the answer of this witness in which he attempts to describe what was in the so-called retail typewritten price list.

The COURT. I overruled your objection.

Mr. LEHRICH. Exception. No cross.

The COURT. You may renew your motion at the close of the day and I will see how the situation has shaped up at that time. The witness is excused. I assume there were no questions by Mr. Seymour.

Mr. SEYMOUR. No; I have no questions, your Honor.

SAMUEL PRUZANSKY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. JAMES:

Q. In what business are you engaged, Doctor?—A. I am an optometrist.

Q. You are what?—A. An optometrist.

Q. And where is your office located?—A. At 90 Canal
847 Street, New York.

Q. How long have you been engaged in that business?—A. Well, I have been located for myself since 1937.

Q. And do you have a Soft-Lite license?—A. I do.

Q. When did you get that license?—A. About May of 1937.

Q. At the time that you took out that license did you have any conversations with representatives of your wholesaler?—A. That is right.

Q. Just yes or no.—A. Yes.

Q. And was that immediately after taking out the license, or before?—A. No; just before.

Q. And who was that representative?—A. Well, which one do you mean? I had one with the Soft-Lite Lens Company.

Q. No, of the wholesaler.—A. Oh, that was Paul Clark, of Colonial Optical Company.

Q. Your wholesaler then was the Colonial Optical Company?—A. That is right.

Q. What was the conversation that you had with Mr. Clark at that time?

Mr. SEYMOUR. I object to the conversation with Mr. Clark, as incompetent, irrelevant, and immaterial.

The COURT. Overruled.

Mr. LEHRICH. I object.

848 The COURT. Overruled.

A. Well, I was told that if I could—you see, that lens—may I explain the situation?

The COURT. No; give the substance of your conversation. You can do that.

The WITNESS. Well, I was told that if I would maintain the price as fixed, because it was a license proposition, and being on Canal Street—you must be ethical enough to get the license first of all, and being on Canal Street they said it would be hard to maintain the price, and if I could do it he would introduce a Soft-Lite representative and I could get the license.

Q. What was the price to the consumer?—A. Well, they said I could get only a minimum of $6.

Q. Did you have any conversations with representatives of the Soft-Lite Company at that time?—A. No; not at that time.

Q. Did you have any conversations with them after that?—A. Oh, yes; surely.

Q. At what time was your first conversation?—A. Well, when I said that I thought I could maintain the price Paul Clark had me fill out an application for the license, and then when he brought Fred Scheinbloom—I think his first name was Fred—Scheinbloom of the Soft-Lite Lens Company in with it——

848-A Mr. ISSEKS. I would like to get the spelling of that.

Mr. LEHRICH. S-c-h-e-i-n-b-l-o-o-m. He is a salesman.

849 Q. And what was your conversation with Mr. Scheinbloom at that time?—A. Well, at that time he just told me that my license had been approved and that I would get it, and he also showed me some of the advertising material and explained the different things about Soft-Lite that would be helpful in dispensing.

Q. And did you have any later conversations with Mr. Scheinbloom?—A. Well, I mean he kept dropping in from time to time for the next couple of years and asking me about the price and

maintaining it; I mean nothing definite for the next few years after that.

Q. And when was the last time that Mr. Scheinbloom called on you?—A. I think it was about a year and a half to two years ago he dropped in then.

Q. What was the nature of the conversation at that time?—A. Well, it was purely social.

Q. And in your conversations with Mr. Scheinbloom did he review the matter that Mr. Clark spoke to you about?

Mr. LEHRICH. I object to that.

The COURT. Sustained. I will let you direct his attention to the subject matter, but I will not let you lead the witness. He is your witness and you ought to know what he wants to testify about.

Q. Did Mr. Scheinbloom ever talk to you about prices that you were to charge?—A. Yes, he said that I was to get a
850 minimum of $6 or else the license would be revoked.

Q. And when was that he told you that?—A. That was just after I had gotten—just the time he was introduced to me and he mentioned it several times after he came in. I mean he never was as blunt as that afterwards. He just asked whether I was maintaining the price and told me about different people who had not maintained it who had been taken off the list.

Mr. JAMES. That is all, your Honor.

Cross-examination by Mr. LEHRICH:

Q. Did Mr. Scheinbloom ever check your records to ascertain what you were getting?—A. No.

Q. Did he ever ask you to fill in reports as to what you got for Soft-Lite lenses?—A. No, sir.

Q. Did not Mr. Scheinbloom tell you in effect that in your neighborhood the prevailing price for Soft-Lite lenses was $6.00.—A. No, sir. There is no other licensee in my neighborhood. There is only one other licensee in my neighborhood.

Q. Where is that, on Canal Street?—A. No, sir. On Chrystie Street. There is only one other that I know of I should say.

Q. And did Mr. Scheinbloom talk with you about protection certificates?—A. He did.

851 Q. Did he ask you to give a certificate to each patient?—A. That is right.

Q. Did he tell you that there was a great deal of imitation in your district? Did he talk to you about that subject?—A. No, sir.

Q. Did he talk to you about "palming off" in your district?—A. No, sir.

Q. At the same time you sold Soft-Lite lenses did you sell any other kind of lenses, pink-tinted?—A. No.

Q. Did you sell Velvet-Lite lenses?—A. No, sir.

Q. Did you sell Cruxite?—A. Not unless the doctors prescribed it. On my own prescription I stressed Soft-Lite wherever possible.

Q. And wherever an oculist prescribed some other kind you furnished them?—A. Naturally.

Q. I mean you had no trouble getting them?—A. No, sir.

Q. I mean from your source of supply?—A. No, sir.

Q. Did you furnish any report on Soft-Lite lenses, or were you ever requested to furnish any reports as to sales or at what price you made your sales?—A. No, sir.

Q. Did you keep any record of the protection certificates given by you?—A. No, sir.

Q. Were you asked to keep any record?—A. Not that I recall.

852 Q. Did you furnish them with the sale of every pair of lenses?—A. At the beginning I used to write up on my records the number of the protection certificates.

Q. That was for your own protection?—A. Yes, but I found in fact I could get Soft-Lite, so I felt that I need not do that any more.

Q. And you felt that anybody could get the certificates?—A. That is right.

Q. So you did not bother?—A. That is right.

Q. You found it was sort of haphazard in its enforcement?—A. That is right.

Mr. LEHRICH: That is all.

ABRAHAM J. HELLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. MCCRACKEN:

Mr. Heller, are you presently employed?—A. I am not employed.

Q. Do you have a place of business at the present time?—A. I do.

Q. Where is it?—A. 276 Livingston Street, Brooklyn.

Q. Under your own name?—A. Under the name of Keensight.

Q. What is the nature of that business?—A. Optometrists and opticians.

Q. Are you now a Soft-Lite licensee?—A. I do not think so.

853 Q. Have you ever received a Soft-Lite license from Soft-Lite in the past?—A. I have.

Q. When did you receive it?—A. About eight years ago; eight or nine years ago.

Q. Did you ever receive a notice of cancellation from Soft-Lite?—A. I did.

Q. When did you receive that?—A. Approximately four years ago; four to five years ago.

Q. While you were a licensee of Soft-Lite, did you sell Soft-Lite lenses to the consumer?—A. I did.

Q. Did you ever receive any instructions from representatives of Soft-Lite as to the prices to charge the consumer?—A. We received a suggested retail price list.

Q. From whom did you receive it?—A. From the Soft-Lite Lens Company.

Q. Do you remember when you received it?—A. At the time that I became a licensee; around that time; within a week.

Q. With whom did you deal in the purchase of Soft-Lite?—A. If I am not mistaken, the name of the salesman was Weinrib.

Q. Was he connected with Soft-Lite?—A. He was connected with Colonial.

Q. And he was the one with whom you dealt in relation to your purchases of Soft-Lite?—A. That is correct.

Q. When you received what you have testified was a re-
854 sale price list to the consumer, how did you receive it?—A. I am not sure whether I got it in the mail or whether I got it with my shipment of lenses.

Q. From whom did you get your shipment of lenses?—A. Colonial Optical Company.

Q. Did you receive any material through the mail from Colonial Optical Company?—A. I received, I believe, through the mail, a beautifully engrossed license to be displayed on my counter.

Q. Did you receive the price list from Colonial at that time?

Mr. LEHRICH. If your Honor please, I object to the classification of the paper as a price list unless that paper is produced. There is a sharp conflict here on this particular price list.

The COURT. Yes; I am aware of that, but I am going to allow him to identify a paper as a price list. I don't know how else you can identify a paper of that kind.

Q. Do you recall the document which you have identified as a price list?—A. Well, I am not sure whether it was a blue or pinkish hue paper with the suggested price on it.

Q. What suggested prices?—A. Well, they averaged——

Mr. LEHRICH. I object to that.

855 The COURT. I will sustain the objection unless you first lay a foundation for the non-availability of the paper.

Q. Do you have that price list with you now?—A. I searched for it but I could not find it. It is so long ago since I had it and I did not receive any new ones so I could not locate it.

Q. What is your recollection as to the contents of that document?—A. Well, the prices ranged about $3.00 over the price of the regular lenses.

Mr. LEHRICH. I object to that and I object on the ground that no foundation has been laid to show the contents of a document not produced, and certainly there has been no description, whether it was a price list from Colonial or price list from Soft-Lite.

The COURT. I will let counsel develop those facts and overrule your objection. I think the foundation has been adequately laid when the witness says he could not find the paper.

Mr. LEHRICH. Exception.

Q. Directing your attention to that document that you have said was a price list, will you give us your own recollection as to its appearance? Was it a printed list or was it a typewritten list?—A. Well, it was some typewritten and I cannot recollect exactly.

Q. Do you remember what color paper it was?—A.
856 Bluish or pinkish.

Q. Do you remember the color of the ink used?—A. I imagine that would be black.

Q. Do you remember what prices it listed?—A. Well, it listed the various divisions of spherical and compounds.

Q. What products?—A. Soft-Lite lenses.

Q. Any other products?—A. Thin-lite lenses, I believe.

Q. Any others?—A. And so much extra for color bifocals.

Q. But nothing referring to anything other than Soft-Lite and Thin-Lite?—A. Soft Lite and Thin-Lite.

Q. Do you remember the name of any wholesaler that was printed on that price list?—A. Well, evidently, most likely, it had Colonial on it.

Mr. SEYMOUR. I move to strike out that answer, if your Honor please.

The COURT. Motion granted.

Q. Did you follow the prices set up in that price list in the sales to the consumer?—A. To a certain extent I did.

Q. Do you remember what those prices were?—A. Well, I think they ranged from $6.00 a pair upward.

Q. What particular transaction did the $6.00 price refer to?—A. That is the simple spherical lens.

Q. Single vision?—A. Single vision.
857 Q. In sales to whom?—A. To my patients.

Q. The consumer?—A. That is right.

Q. At the time you were a Soft-Lite licensee, were you buying products from Bausch & Lomb?—A. I was to quite an extent.

Q. Were you licensed by Bausch & Lomb to handle any of its products?

Mr. SEYMOUR. I object to that as incompetent, irrelevant, and immaterial, and I object to the question of the license from

Bausch & Lomb and the transactions with Bausch & Lomb as not having anything to do with any issue in this case.

Mr. McCracken. I submit on the basis of the question the reference is to the time when he was selling Soft-Lite, and on the basis of the record in this case there is a definite and distinct relationship possible, and I would like to develop that.

The Court. You will have to lay a better foundation than you have for that kind of question. For the present I will sustain the objection.

Q. What Bausch & Lomb products did you sell at that time?—A. I sold their Loxit mountings, and their white lenses.

Q. Did you have a license to sell Loxit?—A. I had a license.

858 Mr. Seymour. I object to this line, if your Honor please.

The Court. Sustained. I do not see the materiality of it t this stage of the game.

Mr. McCracken. Your Honor, I would like to make an offer of proof at this time. If this witness were permitted to testify, it is the Government's belief that he would testify he was removed from the Loxit list at approximately the same time he was removed from the Soft-Lite list, as there are sufficient facts to establish the causal relations between the two.

The Court. Have you anything that this witness is going to testify to which would indicate joint action?

Mr. McCracken. The witness would testify as to the relationship in time, so it might very well be that he had reason to believe——

The Court. I certainly would not have him testify as to his reasons for belief.

Mr. Seymour. I submit that the closeness in time in an industry as big as this is not a thing from which any inference could be drawn.

The Court. I will let him put in that proof. Is there any question about it?

859 Mr. Seymour. I never heard of this witness before.

The Court. I will let you prove what you have indicated.

Q. Did you hold a Loxit license from Bausch & Lomb?—A. I did.

Q. During the time you were a Soft-Lite licensee?—A. That is right.

Q. Was it subsequently cancelled?—A. It was.

Q. When?—A. At the time that the Soft-Lite license was cancelled; about eight or nine years ago.

Mr. Seymour. I object to the question and move to strike out the answer. The question called for time and not relationship.

The COURT. I will grant your motion with respect to the last answer. Certainly, if you are going to tie this thing onto time, you ought to give time with much greater precision than you have given it. You are now giving no more than an opinion.

Q. Directing your attention to the date on which your Soft-Lite license was cancelled, I believe you testified that was in 1936?—A. That is right.

Q. Now, directing your attention to the date when your Loxit license was cancelled, when was that?—A. 1936.

Q. What part of 1936 was your Soft-Lite license cancelled, if you know?—A. Well, the month, you mean?

860 The COURT. I would like the month and the day, if you are going to tie any inference to the time relationship.

The WITNESS. I would say it was in the Spring. I could not be any more definite than that.

The COURT. Then I will entertain a motion to strike it all out.

Mr. SEYMOUR. I make such a motion.

The COURT. I grant it. This is getting too speculative.

Mr. ISSEKS. May we call for the production of the records from the defendants?

The COURT. Certainly.

Mr. ISSEKS. We call for the production by both defendants of the date when this gentleman was taken off the Loxit list and when this gentleman was taken off the Soft-Lite license list.

The COURT. Certainly. Then you would have your facts.

Mr. ISSEKS. They have the records and there will be no difficulty in their getting them.

The COURT. Very well.

By Mr. MCCRACKEN:

Q. Did you receive a formal notice of cancellation from Bausch & Lomb?

861 Mr. SEYMOUR. I object to that as immaterial at this stage.

The COURT. Overruled.

A. The first notice that I had that my license was going to be cancelled was a representative of Colonial came to my office and demanded the Loxit machine back.

Q. Do you remember when that happened?—A. That was in the Spring of 1936.

Q. And you have not dealt in Loxit since that time?—A. I have not dealt in Loxit since that time, and I have been put to great expense——

Mr. SEYMOUR. I move to strike that out.

The COURT. Strike out that part.

Mr. ISSEKS. We consent, your Honor.

Q. Did they take your machine?—A. They took my machine away.

Q. Was that before or after the cancellation of the Soft-Lite license?—A. Before.

Q. How long before?—A. About a week.

Q. Subsequent to the cancellation of your Soft-Lite license have you been able to secure Soft-Lite lenses for your customers?—A. With very great difficulty; with quite a bit of dealing through indirect sources.

Mr. McCracken. No further questions.

862 Mr. Seymour. Now, if your Honor please, counsel for the Government has asked for the production of certain information. I never heard of this fellow before and I will have to get that information or any information that is available from Rochester, and therefore I suggest that he be recalled for cross-examination when I have had the opportunity to do that.

Mr. Isseks. We are willing to do that. You are willing to come back tomorrow, are you not?

The Witness. It is very difficult for me to get back because my associate is away and I am the principal there.

Mr. Isseks. If the Court asks you, you can come back, can't you?

The Court. Either tomorrow or the day after that, which would be Monday.

Mr. Seymour. If the Government will consent to strike out his testimony, we won't press it.

Mr. Isseks. Counsel knows we won't.

The Court. Very well; the witness will be directed to return on Monday, as I assume it will take until that time to get this information.

Mr. Seymour. I will have it by tomorrow or perhaps by this afternoon.

Mr. Isseks. The witness will come back any time your Honor directs.

863 The Court. Which do you prefer, Mr. Witness? Tomorrow or Monday?

The Witness. Monday is a bad day. Tomorrow is better.

The Court. Very well. Return tomorrow at ten-thirty, and the cross-examination will be deferred until that time. You are excused.

Edward A. Berliner, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. McCracken:

Q. Mr. Berliner, you are presently employed?—A. I am my own employer.

Q. Where is that place of business?—A. In Brooklyn, 874 Utica Avenue.

Q. What is the name of it?—A. Edward A. Berliner, Optometrist.

Q. What is the nature of your trade? To what class of customers do you sell?—A. Oh, a medium-priced; a medium-type of wage earner and worker.

Q. Consumers in all cases?—A. Consumers in all cases.

Q. Have you in the past dealt in Soft-Lite lenses?—A. I have.

Q. Do you remember when you first dealt in Soft-Lite
864 lenses?—A. About nine or ten years ago.

Q. Can you fix the date, according to your best recollection?—A. About 1930 or 1931.

Q. Did you hold a license at that time?—A. I dealt with Soft-Lite lenses first, and later had a license, I think.

Q. Do you remember the nature of the license?—A. A regular franchise beautifully engrossed and enscrolled with a lot of things on it and my name at the end of it.

Q. Was it a prescription license or——— A. A prescription license.

Q. Did you sell Soft-Lite lenses to the consumer while you were a licensee?—A. I did.

Q. Did you receive instructions from Soft-Lite as to the prices you should charge the consumer?—A. If you can call a printed price list instructions, I did.

Q. I direct your attention to what you refer to as a printed price list and ask you to explain when you received such a thing.—A. I have been dispensing about eight or nine years, and I think about eight or nine years I had a pink—incidentally, previous to that there was a blue price list which I think had Soft-Lites and Thin-Lites at the same time. After that I had a pink printed price list with a prescription price on it, the cost to me, and also a suggested price to the retailer.

865 The Court. To the retailer or to the consumer?

The Witness. I mean to the consumer.

Mr. Lehrich. If your Honor please, I object to all this and ask to strike it out on the ground that we are now getting the contents of a written document which is not produced.

The Court. So far there has only been a statement that he received a document. He does not say who gave the price list to him.

Q. Directing your attention to what you call the pink price list, do you remember when you received that?—A. It is a good many years ago. It is about eight years ago.

Q. That is your best recollection—A. Yes.

Q. Do you remember from whom you received it?—A. I do not recall.

Q. At that time with whom were you dealing in your purchases of Soft-Lite lenses?—A. With two wholesalers, I think; I think it was either L. H. Koch or Hygrade Optical Company.

Q. Does that refresh your recollection as to where you received the price list?—A. No, I do not recall.

Q. Was it handed to you?—A. The time is so far back I cannot specifically state.

866 Q. What is your best recollection, whether it was handed or mailed to you?—A. It may have been mailed to me.

Q. That is your best recollection?—A. Yes.

Q. Directing your attention again to that same price list, will you describe it?

Mr. LEHRICH. I object on the ground that no proper foundation has been laid.

Mr. MCCRACKEN. O. K., your Honor.

The COURT. Sustained.

Q. Do you now have that pink price list?—A. I have not.

Q. Do you have a recollection as to the nature of that document?—A. Yes.

Q. Will you give us that recollection?

Mr. LEHRICH. I object.

The COURT. What has happened to the paper? Why don't you ask where it is?

Q. Why don't you have it now, sir?—A. In the optical business the average prices, both retail and wholesale, are pretty well fixed in the mind of a man who uses lenses and sells them and dispenses them for a long period of time, and after a short time a thin paper becomes ragged or soiled and it is either thrown out or destroyed.

By the COURT.

867 Q. Have you made a search for that paper?—A. Yes, sir.

Q. Have you found no trace of it?—A. I have not found any part of it.

The COURT. All right. Proceed.

By Mr. MCCRACKEN:

Q. Again directing your attention to that same pink list, will you give us to the best of your ability your recollection of the list?

Mr. LEHRICH. I object on the ground that the witness said he did not know where he got the list.

The COURT. He said he did not know from whom he got it and I understood that to mean he did not know the name of the individual.

When you said you did not know from whom you received the list, did you mean to indicate you did not know the name of the individual from whom you received it?

The WITNESS. I might say that at any time eight years ago I could call any wholesaler who dealt in Soft-Lite lenses and have him send me a list.

Mr. SEYMOUR. I move to strike it out.

The COURT. Motion granted.

By the COURT:

Q. Do you know whether you got it from Soft-Lite?—A. I cannot truthfully say so.

Q. Do you know whether you got it from one of your
868 wholesalers?—A. Yes, sir.

Q. You think it was one or the other?—A. Yes, sir.

The COURT. Very well. I will overrule the objection.

By Mr. MCCRACKEN:

Q. At the time you were dealing with the wholesalers who handled Soft-Lite?—A. A wholesaler.

Q. Who was the wholesaler?—A. Hygrade Optical and L. H. Koch.

Q. To your best recollection, it came from one of those two?—A. Yes, sir.

Q. Directing your attention to the blue price list which you said you received, did you receive that before or after the pink one?—A. Before.

Q. How long before?—A. Oh, a couple years before.

Q. Approximately when?—A. About 1929 or 1930.

Q. While you were a licensee?—A. No. There were not any licenses at that time.

Q. While you were selling Soft-Lite?—A. That is right.

Q. How did you receive the blue price list?—A. I asked for it from a wholesaler.

Q. Do you remember who the wholesaler was?—A. Probably the Hygrade Optical Company at that time.

Q. Have you that document with you?—A. No.

Q. Have you looked for it?—A. Yes.

869 Q. You are unable to find it?—A. It is eleven years since.

Q. Directing your attention still to the blue price list, what were the contents of that document, if you remember?

Mr. LEHRICH. I object on the ground that no proper foundation has been laid and the question is too general and it calls for the contents of a written document.

The COURT. Overruled. All he asked was whether he remembers the contents and the answer is yes or no.

The WITNESS. It was a definite Thin-Lite and Soft-Lite price list.

Q. Just do you remember the contents; yes or no?—A. Yes.

Q. Will you tell us the contents?

Mr. LEHRICH. Same objection.

The COURT. Overruled.

Mr. LEHRICH. Exception.

A. There was a list of prices for the retailer, for the optometrists, and opticians at that time.

Q. What prices were they in relation to your dealings with your customers?—A. No. I do not think that was with my customers at that time.

870 Q. Was that the prices at which you purchased from the wholesalers?—A. That is right.

Q. Directing your attention to the pink price list, what prices were contained therein?—A. That had prices to the optometrists and opticians and suggested resale prices to the consumer.

Q. And do you remember those prices suggested, the resale prices to the consumer?—A. About $7.00 to about $8.50—oh, from $6.00 or $7.00 up.

Q. For what?—A. For Soft-Lite lenses, finished.

Q. Single vision or bifocal?—A. Single vision.

Q. Did you follow the prices on that list?—A. I adhered to them closely.

Q. Did you have any discussion with any representatives of Soft-Lite regarding your sales of Soft-Lite lenses while you were a licensee?—A. Oh, yes. A few years ago.

Q. When, sir?—A. About three years ago.

Q. With whom were you talking at the time?—A. I think his name was Goodman or Goodstein.

Q. What was the nature of the business you were talking about?—A. Why, he came in on a so-called missionary trip, discussing Soft-Lite sales and lens users, and I am afraid I put my foot in it. I told him at the time that in my community the wage earners or people could not afford

871 to pay high prices——.

Mr. LEHRICH. May I make the suggestion that we have no Goodman or Goodstein and I think the question ought to be explored before we take that testimony.

Mr. MCCRACKEN. I am perfectly willing to explore it.

The COURT. Go ahead.

Q. Do you know where this person came from?—A. He was directly from the Soft-Lite Company.

Q. How do you know?—A. His portfolio, his introduction of himself to me; naturally, when a man walks in cold he introduces himself.

Q. You had not seen him before?—A. I did not see him before.

Q. Have you seen him since?—A. I have not seen him since.

Q. Describe him, please?—A. I would say he was about five feet five; his hair between light brown and blond; he had a ruddy complexion, full face.

Q. Did you transact business with him relating to Soft-Lite?—A. Well, I mean I did not order any lenses or anything from him, but I discussed Soft-Lite lenses with him.

Q. Was he familiar with your business with Soft-Lite?—A. I assume he was.

872 Q. Did you talk about your past dealings in Soft-Lite at that time?—A. Yes.

Q. Did he refer to your wholesaler?—A. I do not recall.

Q. Did you discuss your purchases from your wholesaler with him?—A. Yes. I said that I had not been selling very many Soft-Lites because of what I called the price situation in my community and that incidentally that I did not promiscuously push the sale of tinted lenses for the sake of getting a few dollars more and if I wanted a low price tinted lens there were some other good lenses on the market.

Q. What did you mean by for the sake of getting a few dollars more?—A. It is a very unfortunate, unethical way, whether one sells Cruxite or any other tinted lens, to use that as an expedient to high pressure the customer, or whatever you want to call him——

Mr. LEHRICH. I ask that this portion of the testimony be stricken out.

The COURT. Granted. You can ask him about his conversation, but I don't want his opinion.

Q. What did you say to the representative at that time?

Mr. LEHRICH. I object on the ground that the represent-

873 ative has not been identified; we have no Goodman or Goodstein. I gave counsel for the Government a list of all our representatives all the way back, and they know that, and they knew that when they brought this witness on.

Mr. ISSEKS. Your Honor, we were given a list which did not include Mr. Scheinbloom, and yet we have since found out that he is a representative.

Mr. LEHRICH. That is not so.

Mr. ISSEKS. Here is a list, and Scheinbloom does not appear on there at all.

Mr. LEHRICH. Yes; here it is, and you know it. Here it is Ferdie Barnard.

Mr. ISSEKS. How do we knowth at this man Goodman or Goldstein was not Ramaker or Wahlgren, or plenty of others on this list.

The COURT. I think the witness has sufficiently identified him as a representative of the company. Apparently the witness cannot remember his name, but he brought a portfolio of literature from the company. I will overrule your objection.

Q. (Question read.)—A. That I was not selling too many Soft-Lites because of the community I was located in.

Q. Is that all you said to him at that time?—A. And that, as I said, that where the occasion demanded a good tint, I could
874 use other lenses too, except on prescriptions from oculists, where the Soft-Lites were mentioned, and that I would fill the prescription then.

Q. Was that all you said to him at that time?—A. And that I very distinctly stressed four points—but they may be opinions.

The COURT. Whatever you said to him, you can tell us.

The WITNESS. Exactly. I said first, that most absorption of light was done by the glass itself; second, that in my community the Soft-Lite lens at the price we had to sell it was too high for the average consumer there; third, that there were other good tinted lenses on the market; and fourth, except that where I was so ordered or direced by an oculist I would fill the prescription with Soft-Lite.

875 Q. Directing your attention to the third point you mentioned, that there were other good tinted lenses on the market, did you sell other tinted lenses?—A. I did.

Q. Did they sell at the same price that Soft-Lite sold?—A. No; they were cheaper.

Q. How much cheaper?

Mr. LEHRICH. I object to that as immaterial.

Q. If you told him?—A. Oh, a dollar or a dollar and a half cheaper in some cases.

Q. Did you tell him that?—A. I did not mention price.

Q. But you reaffirm your previous testimony?—A. Yes.

Q. Did you receive a notice of cancellation of your license from Soft-Lite?—A. I did.

Q. When did you receive it?—A. Two or three weeks after this conversation.

Q. To which you have testified?—A. Yes.

Q. Have you ever received a notice of reinstatement?—A. I spoke to my wholesaler and said that I was going to write Soft-Lite and tell them my opinion of them, about ethical practices, and he told me not to get hot under the collar and he would reinstate me in case I needed to be reinstated by Soft-Lite.

Q. Did you ever receive a notice of reinstatement?—A. I am not sure.

876 Q. What is your best recollection?—A. I am not sure. I think I am still a Soft-Lite franchise holder now.

Q. But you never received a notice of reinstatement?—A. No; I do not think so.

Mr. McCracken. No further questions.

Cross-examination by Mr. Lehrich:

Q. Your recollection is that back in 1930 or 1931 you got a pink price list?—A. No; about 1933.

Q. You say you think you got a pink price list in which there were indicated your prices, to be paid to the wholesaler, and suggested prices to be charged by you to the retailer?—A. Yes; I think so.

Q. To the consumer, I mean.—A. To the consumer.

Q. Is this the prescription price list you are referring to [handing to witness]?—A. No; I think mine was a single fold. A single fold. This is a double sheet.

Q. Was the price list that you are referring to printed or typewritten?—A. I think it was printed.

Q. I show you a price list which is a double fold, a pink price list, dated January 1, 1930 [handing to witness]. Is this the price list you were referring to?—A. No.

Mr. Lehrich. That is all.

The Court. Any other questions?

Mr. Seymour. No questions.

877 Mr. Isseks. Your Honor, we would like to get a stipulation from counsel. They gave us a list of salesmen in the period 1936 to 1941 which had on it F. Bernard, and gave his address. I understand the gentleman also was F. B. Scheinbloom.

Mr. Lehrich. Mr. F. B. Scheinbloom changed his name two or three years ago to F. Bernard. The same gentleman, no question about it.

The Court. You have the stipulation.

Mr. Lehrich. No other changes of name on the entire list.

Mr. Isseks. The Government has no further witnesses except Mr. Ramaker and Mr. Sterling, and we understand we can examine those gentlemen after we get through with the cross and redirect of Mr. Singer.

Nathaniel Singer resumed the stand.

Cross-examination resumed by Mr. Lehrich:

Q. Mr. Singer, you were asked some questions about a suggested price list on Sport-Lites and Overglass issued in 1936 by your company.—A. Yes.

Q. I show you these two pieces of merchandise [handing to witness], and ask you to identify those if you can.—A. This is the Sport-Lite and this the Overglass [indicating].

Mr. LEHRICH. I offer them both in evidence.

Mr. ISSEKS. We have no objection.

878 (Marked "Defendants' Exhibits N and O.")

Q. Mr. Singer, I show you Exhibits N and O, Exhibit N being the Sport-Lite and Exhibit O the Overglass, each of which consists of a case, a frame, and a pair of lenses. Were both of those units sold in that assembled form, from your company to the wholesaler?—A. They were.

Q. And from the wholesaler to the retailer?—A. They were.

Q. And from the retailer to the consumer?—A. They were.

Q. No work of any kind was done in any of those intermediate steps by anybody?—A. No.

Q. Now I show you Exhibits 98 and 99, in which you have suggested minimum retail prices, a column entitled "Suggested Minimum Retail Prices." Those refer to prices to the consumer [handing exhibits to witness]?—A. Yes.

Q. Other than Exhibits 98 and 99 do you recall any instance when the Soft-Lite Lens Company published a printed, typewritten, mimeograph, or any other form of suggested price list of prices to be charged by the retailer to the consumer?—A. No.

Q. During what period did you sell Sport-Lite and Overglass?—A. Oh, tried to sell it for about four years. I would say from about 1936 to 1940, something like that.

Q. Do these figures refresh your recollection as to the sales made during the years 1935 to 1939 of Sport-Lites and

879 Overglass [handing paper to witness], and if those figures do refresh your memory will you tell us the dollar value and the percentage value of your total business, that these items represented during those years.—A. In 1935 the dollar value of Sport-Lite sales for the whole year was $1,173.

Q. How many units?—A. 227.

Q. And what percentage of your total business did that represent in dollars?—A. 0.2 percent.

Q. In 1936 how many Sport-Lites did you sell?—A. 2,733.

Q. And what did that represent in dollar value?—A. $8,070.

Q. And what percentage of your dollar value did that represent?—A. 1.5 percent.

Q. And what percentage of your units?—A. 6/10 of 1 percent.

Q. 1937.—A. 783 units valued at $2,360, and that represented 3/10 of 1 percent.

Q. In dollar value?—A. In dollar value, and 2/10 of 1 percent in unit value. In 1938, I am sorry to say it was so small it had no percentage.

Q. How many units did you sell?—A. 20 units, $125.

Q. What was your total business that year?—A. $800,000. Actually $807,000.

880 Q. In 1939.—A. Well, of the total business, which was $910,000, we sold $1,942 worth of Sport-Lites, which represented 771 units.

Q. Give us the percentages of dollar value and unit value.—A. 2/10 of 1 percent in dollar value, and 1½—15/100 of 1 percent in units.

Q. Mr. Singer, going back to Mr. Wahlgren and Mr. Hubbell, I think you testified yesterday that you concluded your arrangements with Bausch & Lomb for the making of the glass early in August 1924.—A. Yes; the first week.

Q. Have you a record which will refresh your recollection as to when you made the first sale to Mr. Wahlgren of Soft-Lite lenses made from Bausch & Lomb glass?—A. In December.

Mr. LEHRICH. Is there any objection to my handing this to the witness? I assume there is no objection to my handing the witness papers to refresh his recollection.

Mr. ISSEKS. Not at all.

The WITNESS. December 1924, about $1,550 worth. That was to the Riggs, East.

Q. That was the Omaha——A. Division. A similar amount to the Coast; Riggs, Coast.

Q. Mr. Roy Wahlgren was in charge of both divisions at that time?—A. Yes.

Q. In other words, then, in December you sold approxi-
881 mately $3,100 worth of the lenses?—A. Yes.

Q. Just referred to, to Mr. Wahlgren?—A. Yes.

Q. And that was the first sale of Soft-Lite lenses made from Bausch & Lomb glass to Mr. Wahlgren?—A. Yes.

Q. After Mr. Wahlgren made this investment of approximately $3,100, did you have occasion to see him more frequently than you had in the past?—A. Why, of course. It was part of my job to help him popularize my brand in his territory. I spent lots of time calling on his trade, working with his branch managers and salesmen, and I would come in from time to time to Omaha to report to him on the progress we were making, hoping that by setting an example of activity of that kind he would follow through when I left.

Q. Subsequent to his stocking with Soft-Lite lenses, just referred to, you developed a pretty close relationship with Mr. Wahlgren, didn't you?—A. Yes.

Q. And did you develop such relationship also with Mr. Hubbell?—A. Yes; I had been friendly with Mr. Hubbell much longer, because I had been doing a good business with him for quite a while.

Q. In other words, he was a customer, or his company was a customer, during the period in which Mr. Wahlgren's company had ceased doing business with you; is that correct?—A.
882 Well, they had not ceased, but they had not bought anything in eight or nine months; but White-Haines continued to buy and sell our product, and cooperated with us, and naturally I sold much more to Dan than I would to somebody who was not doing much business with us.

Q. After Mr. Wahlgren became active in Soft-Lite lenses did you then spend considerable time with him and with Mr. Hubbell?—A. Of course.

Q. Thereafter both Mr. Hubbell and Mr. Wahlgren acquired some interest in your company?—A. Considerably thereafter.

Q. Well, the minutes read into the record——

Mr. LEHRICH. Incidentally, I could not find it anywhere in the record. I thought you read that in.

Mr. ISSEKS. Let us have the minutes, then.

Mr. LEHRICH. I have them here, but I thought the other day you read the resolution in. We searched for it last night and could not find it in the court minutes.

(Short recess.)

By Mr. LEHRICH:

Q. Mr. Singer, after 1924—December 1924—I think you testified that your relationship with Mr. Wahlgren and Mr. Hubbell became much closer.—A. Yes.

Q. You saw them more frequently, and talked to them more frequently?—A. Yes.

883 Mr. LEHRICH. I will read into the record, if your Honor pleases, a portion of the resolution which I thought Mr. Isseks had read in, and the following paragraph. These resolutions are taken from the minutes of the regular meeting of Optical Service Corporation's board of directors, held on February 10, 1925:

"Whereas, in the interest of greater efficiency and for the purpose of securing greater cooperation in the marketing of the products of this company among the various branches of the Optical business, it is desirable to form a Consulting Executive Committee to consist of not less than two persons, or more than four, to be chosen, in the discretion of the Board of Directors, from among those persons engaged in any branch of the optical business; the duties of said committee to be the giving of advice and assistance to the Board of Directors and officers of this company, in all matters pertaining to the business of this company, by correspondence, meetings, and conferences; said meetings and conferences to be held at New York or elsewhere, as may be necessary, and

"Whereas, the Board of Directors reposes full faith and confidence in the ability and integrity of Daniel D. Hubbell, of Columbus Ohio, and Roy M. Wahlgren, of Omaha, Nebraska,

"Resolved, that said Daniel D. Hubbell, and Roy M.
884 W. gren be and they hereby are constituted a Consulting Executive Committee of this company, to perform the duties of said Committee as above enumerated for the fiscal year, beginning March 1st, 1925, and thereafter in the discretion of the Board of Directors, and be it further

"Resolved, that the members of said Consulting Executive Committee receive as yearly payment for their services as members of said Committee, an amount equal to ten per centum of the increase in the gross sales of the company of the fiscal year for which they were appointed over the gross sales of the previous fiscal year, to be divided equally between the members of said Committee."

By Mr. LEHRICH.

Q. Mr. Singer, after Mr. Hubbell and Mr. Wahlgren became members of the consulting Executive Committee of your company, where did you meet with them and what did you discuss?—A. They were experienced optical men, they had information that was useful to me; I was comparatively new, especially in the kind of work I was doing in the territory out west, and we discussed our business from the standpoint of getting ideas from them that would help me in my doing my job better. After I got to know Mr.
885 Wahlgren, and admired him, naturally I respected a man who was the president of a very fast-growing wholesale house, one of the best in the business, and I always liked and admired Dan Hubbell. I always made it my business if possible when on a trip to meet with them, if I could get within striking distance of either or both. I always attended all of the conventions.

Q. Now you talk about attending conventions. Which conventions are you referring to?

Mr. SEYMOUR. O course, my objection, if your Honor pleases, continues as to any conversations between Mr. Singer, Mr. Wahlgren, and Mr. Hubbell, as not binding on our clients.

The COURT. Very well.

A. Well, there were national conventions. The wholesale associations met twice a year. There were State conventions. Optometric conventions they are.

Q. Those conventions at which manufacturers and wholesalers generally attended?—A. That is right.

Q. Would you route your trips, wherever possible, so as to meet with either Mr. Hubbell or Mr. Wahlgren or with both of them, from time to time?—A. Well, primarily I would route my trips

to cover the conventions; see the customers, write them that I was going to be in such and such territory and if they were going to be in that section I would see them. For example, if I would
886 be in Milwaukee and Roy would be in Chicago, I would ask him if he would not like to spend the evening, and Dan coming up from Chicago would meet with us. If there was a convention in Cleveland, Dan, Roy, and I would run down for a week end at Columbus.

Q. Weren't the discussions at those meetings confined to the business of Soft-Lite Lens Company?—A. No.

Q. What did you talk about?—A. We were mutually interested in a number of ventures.

Q. You mean after the early part of 1925 you went into personal ventures?—A. Yes.

Q. With Mr. Wahlgren and Mr. Hubbell?—A. Yes.

Q. Were some of those ventures unrelated to the optical business?—A. Entirely.

Q. For instance, a furniture company?—A. The principal one that was Halizite, in which we unfortunately put a lot of money.

Q. Was that an optical product?—A. No; that was using a patented process for the manufacture of board from waste material. Roy liked that because it was utilizing farm product wastage, such as corn stalks.

Q. At those meetings were there any discussions about prices to be charged by Soft-Lite Lens Company to wholesalers and by wholesalers to retailers?—A. Well, only insofar as we might
887 ascertain the feelings of our wholesalers on prices in general. You see, we had practically no changes for about ten years.

Q. Would you get in those discussions the problems of both of these gentlemen as large wholesalers?—A. As customers of ours.

Q. Would you tell them your costs, your costs at the factory?—A. No; of course not.

Q. Were you discussing from the viewpoint of your own advantages and their own advantages——A. That is right.

Q. In your representative positions, the various operations of your company?—A. Yes; that is right.

Q. At any time in any of those discussions did either Mr. Hubbell or Mr. Wahlgren say to you in words or in substance that they were representing Bausch & Lomb?—A. No; nor did I know that they had any tie-up with them. In fact I don't believe they did until later.

Q. Now just a minute. When Mr. Wahlgren's company, the Riggs Optical Company, became affiliated with the Bausch & Lomb Optical Company, I think the record shows in 1925——A. Yes.

Q. Were you apprised of that fact?—A. No.

Q. By either Bausch & Lomb or Mr. Wahlgren?—A. No.

Q. You mean that the affiliation was not publicly proclaimed to the trade?—A. Of course not.

888 Q. How long a time was it before you learned of an affiliation?—A. I would say 1927, when White-Haines and Bausch & Lomb were discussing affiliation, and Dan would ask me what I thought of it, what I would do in his place; and then I learned that Roy had already been in for a couple of years. I said, "Dan, why don't you ask Roy?" He said, "Why, I think you would be a more neutral fellow to ask." I said, "Funny thing, I thought Riggs owned that business 100 percent." Roy said, "I own the business. I owe the money for it, but I own it." And that was his talk right down to 1930.

Q. At any rate, did Mr. Wahlgren and Mr. Hubbell attend with you by prearrangement in Rochester at a meeting in which your Soft-Lite business was discussed with the representatives of the Bausch & Lomb Optical Company?—A. No.

Q. You did meet them from time to time in Rochester?—A. That is right.

Q. Was that when they were there on business of their own companies?—A. Of their own.

Q. Did they ever sit in with you, Mr. Hammele, or any other representative or officer of Bausch & Lomb Optical Company, when you discussed any questions of price or distribution by your company with Bausch & Lomb?—A. No. Definitely no. You

889 see, I would run into them either at the hotel or at the plant from time to time. There was no reason for my having them meet with me, because I never discussed my business with anybody but the factory.

Q. You did discuss your business with them from time to time, when you met them all over the country, when they became consulting executives, didn't you?—A. I am talking about my costs at the factory. Anything pertaining to the relationship of Bausch & Lomb and us, it was all a matter of cost.

Q. But the end of the business that originated in Rochester, was that discussed at all with Wahlgren and Hubbell?—A. No.

Q. You did, however, discuss the problems after you had your stock of lenses; is that correct?—A. Well, we did not discuss anything until after they were customers, and they were not customers, the Riggs Optical Company, until the end of 1924.

Q. I am talking about when they were customers?—A. Oh, yes.

Q. Were your discussions confined to sales, after you had them, with Bausch & Lomb?—A. Yes; their sales ideas and mine. I would want their reaction on it.

Q. You did attend sales meetings of Riggs Optical Company from time to time, didn't you?—A. Yes.

Q. And you did address the meetings?—A. I did.

Q. Who attended those meetings?—A. Well, the Riggs
890 Optical Company branch managers, salesmen, representatives of other factories; although we would not be on the same program with them. For example, Bay State would be there, or Bausch & Lomb, or Shuron.

Q. In other words, the Riggs Optical Company brought in their own employees?—A. That is right.

Q. And they had various representatives of the factories——A. Give them sales talks.

Q. Tell the salesmen how to sell the products?—A. That is right; and present the next years' advertising program.

Q. Those meetings were not called exclusively for Soft-Lite purposes?—A. Oh, no; they would get men in from all over the territory. It ran into thousands of dollars.

Q. You would get some time allotted to you on their program, to present your program?—A. That is right.

Q. At any time that you attended a Riggs meeting did you tell the salesmen of Riggs Optical Company, or the branch managers, in words or substance, that your company had a fixed price for Soft-Lite lenses of $9, and that they were to tell the retailers that if they did not get $9 for the lenses, they would not be sold the lenses?—A. No.

Q. Was that your policy in those years?—A. No; and you could not have a price.

891 Q. Was it your policy?—A. No.

Q. Mr. Singer, prior to the time that you took your first trip to Rochester—and I think you place that as May 1924—did you meet with Mr. Wahlgren and Mr. Hubbell at the Old Colony Club in Chicago?—A. No.

Q. Did you meet with them, both of them or either of them, at White-Haines Optical Company in Columbus?—A. No.

Q. After 1935 did you meet with them at both or either of those places?—A. Yes. We had occasion to be at the Old Colony Club and the Hamilton Club in Chicago, and also we would meet at White-Haines or at the golf club, over a week-end.

Q. I said 1935, and I meant 1925.—A. 1925. I thought you said 1925.

Q. Do you know when Mr. Hammele died?—A. I think about 1929.

Q. Between 1924 and 1929 with what person at Bausch & Lomb did you transact all your business?—A. I think I stated before always with the sales manager.

Q. That was Mr. Hammele?—A. Joe Hammele.

Q. And did that cover the costs to you; did that cover questions of delivery and credit and the like of that?—A. He was the only one that handled those questions so far as I was concerned. That is the way things are done up there.

892 Q. Mr. Singer, when was your protection certificate first introduced?—A. In about 1932. Maybe 1933.

Q. What was the purpose of the introduction?—A. Well, as our advertising has always stated, to identify the genuine product for the consumer, so that he knew he was getting the lens that he had been reading about or the lens he was told he was getting. It was to identify the genuine product, and was also darn good advertising for us.

Q. I show you Government's Exhibit 13, which is one of the certificates of your company [handing to witness], and ask you whether the first two numbers of the seven appearing on the certificate assist you in locating the wholesaler to whom the certificates went?—A. That information is at our office. It identifies the certificates set aside for each wholesaler.

Q. In other words you set aside a batch of certificates for a wholesaler?—A. Yes.

Q. And all of those certificates have the same first two numbers?—A. For each wholesaler.

Q. Take for instance Dow Optical Company. You would give him a batch of certificates with the first two numbers "01"?—A. Yes.

Q. Do the consecutive numbers identify in any way any transaction by that wholesaler?—A. No.

893 Q. Do you understand my question?—A. I do.

Q. For instance, if you have 0114071 you can immediately ascertain that that certificate went to Dow Optical Company?—A. Yes.

Q. Can you tell from any record that you keep with what transaction, with what sale of lenses, certificate 0114071 went?—A. Neither I nor anybody else.

Q. Or 72 or 73?—A. It does not mean anything.

Q. Other than the first two numbers, the consecutive numbers do not in any way couple the transaction with the lenses, do they?—A. No; none at all. Do you know the purpose of putting them on?

Q. I asked you that before.—A. What the purpose of putting the number on was. It made it look more like an insurance policy.

Q. You mean you wanted the consumer to get a paper with a number on?—A. That looked genuine, and the only value of the number to us was that we would know what quantity you get for each purchaser, based on his purchases. That was the first two numerals.

Q. Mr. Singer, do you use the number that appears on the protection certificate, the same number, in any form or shape on the lenses that you sell?—A. Those numbers are not recorded in any way. No.

Q. I show you a Soft-Lite package [handing to
894 witness]. Is that——A. A rough cylinder. This is a sphero-cylinder, very strong sphero-cylinder, 6 dioctads.

Q. I call your attention particularly to the package or envelope. Is that the kind of envelope you use for the packaging of all your single-vision lenses?—A. Yes.

Mr. LEHRICH. I offer that in evidence.

(Marked "Defendants' Exhibit P.")

Q. Does the envelope or the lens have any serial or identifying number?—A. No.

Q. When you sell, for instance, a thousand lenses, pairs of lenses, to Dow Optical Company, with those lenses do you send them a thousand certificates?—A. Yes.

Q. Is any record made of the particular consecutive numbers of those certificates, linking it up with the particular transaction of a thousand lenses?—A. None at all.

Q. You understand my question?—A. Yes. They come in packages and when we ship out a thousand pairs of lenses we take enough packages to make up a thousand certificates, send them along with the lenses, and we are through with it.

Q. So far as your records show, do you even keep a record, an inventory record, of your certificates, showing that on a particular day you send a thousand to Mr. Dow?—A. We keep no record whatever of those certificates. The only thing we have there in the stockroom is the first two identifying numbers, which
895 means wholesalers A, B, C, that is all.

Q. Have you ever required the wholesalers on receipt of certificates from you to keep any record of the transfer of that certificate to any particular retailer?—A. No.

Q. In other words, if our record, Soft-Lite Lens Company's record, shows that certificate with a particular serial number delivered to the Dow series, could you by giving Mr. Dow all of the numbers ascertain from his records what pair of lenses were sold to what customer on a particular day?—A. No; and I don't know of any wholesaler who ever kept any records of any numbers.

Q. Have you ever requested the wholesalers to keep any such record?—A. No.

Q. Have you ever requested the retailers to keep any such record?—A. No.

Q. Do either your wholesalers or your retailers send any reports to you as to the disposition of the protection certificates,

identifying the transactions by the serial numbers of the certificates?—A. None whatever.

Q. Did you have any field agents or salesmen who have prescribed duties in the regular course of their employment to check up on transactions by wholesaler to retailer or by retailer to consumer, linking the transactions in any way with the serial numbers on the certificates?—A. None at all.

Q. Do you know how many certificates you have printed
896 and distributed since 1932?—A. Well, I imagine we have. Based on our sales, we must have put out 4 million of them.

Q. Do you know in how many instances, either at your request or at the request of any customer, an effort was made by means of the first two numbers on the certificate to identify the wholesaler to whom the certificates went?—A. If there were a dozen cases in all these years I would be surprised. I would say it is half a dozen or less.

Q. In other words, you employ no regular system of checking up by serial numbers transactions by the wholesaler or by the retailer?—A. Very frankly, this is a rather haphazard proposition. It is getting advertising for us, it is a good thing for the consumer, it is good advertising for us, it adds to the halo. There is no way of checking on that thing.

Q. Was it introduced for the purpose of having a check and tracing through the sale of a lens by means of the protection certificate?—A. No. If you knew how the thing was first introduced you would know it could not be.

Q. The answer is no, then, Mr. Singer?—A. No.

Q. Mr. Singer, when a wholesaler to whom you sent a batch of certificates makes a request for additional certificates and does not at the time purchase any lenses, do you furnish the additional certificates?—A. Yes.

Q. Under what circumstances are such requests made?—
897 A. Well, he may say to the salesman "I need another 50."

Q. I say under what circumstances? What creates the situation where he wants certificates when he does not order lenses?—A. Well, he may say he had a bigger stock than he estimated of Soft-Lites, or he spoiled a lot of them or they got dirty.

Q. Do you replace certificates which while in the wholesaler's stockroom become soiled and stained?—A. Of course. We say "Throw those out, here are some others."

Q. When a pair of lenses is sold by him does he furnish a certificate?—A. He furnishes a certificate.

Q. If he sells a half pair does he still furnish a certificate?—A. A certificate.

Q. Are the certificates enclosed in the envelopes or the packages with your lenses when you send them to the wholesaler?—A. No;

they go packed separately. We put them in a package, and the package containing certificates goes out with the lens shipment, or maybe is sent separately. No connection.

Q. Each certificate is not coupled up with each lens?—A. No.

Q. Lenses are shipped separately and certificates shipped separately?—A. That is right.

Q. When your wholesaler sends his lenses to his re-
898 tailer if he ships more than a single prescription does he enclose the certificates in each lens package?—A. No.

Mr. Isseks. Objection, unless the witness knows.

Q. If you know.—A. Yes.

Mr. Isseks. He does?

The Witness. I know what they tell me.

Mr. Isseks. I am amazed.

The Witness. I know what they tell me.

The Court. You know what they tell you?

The Witness. Yes.

The Court. I will sustain the objection to that.

Q. One more question on this subject, Mr. Singer. When you sell lenses to a wholesaler, a distributor, you have an assigned number, as you have indicated, for that distributor?—A. Yes.

Q. There have been instances when you had your Class A wholesaler set-up, where the distributor sold to another wholesaler; is that correct?—A. Yes; that is right.

Q. Where the Class A wholesaler sold to a retailer and you were able to get a protection certificate from that retailer, would that certificate in any way help you to ascertain the fact that there had been a sale from the distributor to the Class A wholesaler?

Mr. Isseks. Objection.

The Court. On what ground?

899 Mr. Isseks. On the ground that if there is a specific instance we would like to know it and to check on it. There is no proof to show that the Soft-Lite Lens Company ever got a certificate from a retailer. The question was when he got one from the retailer.

Mr. Lehrich. I said if he got one.

The Court. If you saw a certificate would you be able to trace it?

Mr. Isseks. I object to it, your Honor, on the ground it is a hypothetical question.

The Court. Overruled.

Q. Do you understand the question?—A. Yes; I do. Not only would the Class A wholesaler sell them, but the distributors would sell them themselves, and if Dow——

The Court. You are off the question, Mr. Witness. The question is, if you saw a certificate could you tell if this transaction

was direct from distributor to retailer, or went to a Class A wholesaler.

The WITNESS. No. I wanted to tell why.

The COURT. You do not have to tell why. Your counsel did not ask for it.

Q. Mr. Singer, you have a record of the number of salesmen that you employed from 1924 down to date in each year?—A. Yes.

Q. Will you give us that record?

900 Mr. LEHRICH. Your Honor, I do not want to be too detailed, but the cases indicate that all of these questions make a difference, and that is why I am putting it in.

The COURT. That is all right. I have not heard any objection.

A. In 1924, one salesman; in 1925, two; in 1926, four; 1927, four; 1928, five; 1929, three; 1930, seven; 1931, seven; 1932, five; 1933, six; 1934, eight; 1935, seven; 1936, seven; 1937, nine; 1938, nine; 1939, eleven; 1940, fourteen; 1941, eleven.

Q. Were those men all employed as salesmen exclusively?—A. Full time.

Q. Were they employed even part time to do any investigating of sales by wholesalers to retailers or retailers to consumers?—A. No.

Q. Mr. Singer, in 1936 did it come to your attention that Bausch & Lomb was introducing a lense called Ray-Ban?—A. Yes; Ray-Ban.

Q. Is Ray-Ban a tinted lense?—A. Yes.

Q. And is it used for goggle purposes only, or is it used for constant wearing as well?—A. It is used parallel to Soft-Lite.

Q. Is it made single vision or bifocal?—A. Single vision and bifocal.

901 Q. Is it made in Orthogon?—A. Yes.

Q. Is it made in Panoptik?—A. Yes.

The COURT. Is it rose-tinted?

The WITNESS. It is a blue-tinted glass.

Q. When you heard about the introduction of this line of Ray-Ban lenses by Bausch & Lomb, did you complain to Bausch & Lomb?—A. We did.

Q. Will you tell us in words or substance what you said and to whom you said it?—A. Well, probably complained to anybody we got hold of in the factory, and we said we did not like the introduction of another tinted lense; that their story would be confusing with ours, and we did not like it at all; and they said they would think about it. And first they even used the name that we had used, "Anti-glare." Then they withdrew the name temporarily, but came out with the product, and then the product grew from just an ordinary lens to its use in all shapes, then in-

troduced in Panoptik and everything else. Then they called it Ray-Ban Antiglare again.

Q. When you complained did you mention that in your opinion you thought the sale of Ray-Ban lenses would hurt your goodwill in the market you had built up?—A. Yes; but they said they needed it for themselves.

Q. Did you ask them to keep it off the market?—A. Very definitely.

901-A Q. Did they do it?—A. No.

Q. Did you receive this letter from Mr. Eisenhart after you had made several complaints [handing to witness]?—A. Yes.

Mr. LEHRICH. I offer it in evidence.

Mr. ISSEKS. We would like to see it, your Honor.

Mr. LEHRICH. Yes [handing to Mr. Isseks]

902 Mr. ISSEKS. We have no objection to the thing going in, but the thing going through our minds is, why didn't we get it before, because the interrogatories called for documents just like that. If there are any more, we would like to get them now. We would have offered it in evidence ourselves. If there are any more like that that counsel have which have been called for by the interrogatories and which we did not get, we would like to have them.

Mr. LEHRICH. To clear that up, we furnished everything that we thought were called for by the interrogatories, but since the trial began and Mr. Isseks talked about other subjects when we investigate we find a paper or discover a document.

Mr. ISSEKS. I have no objection, but——

The COURT. It will be received.

Mr. SEYMOUR. May I see it?

Mr. LEHRICH. I daresay Mr. Isseks has offered a few he did not give us in his interrogatories.

Mr. GLICKFELD. That is not true. We have given them everything called for on their interrogatories, your Honor.

The COURT. It may be marked.

(Marked "Defendant's Exhibit Q.")

903 Q. After you received Mr. Eisenhart's letter did Bausch & Lomb continue to sell Ray-Ban lenses?—A. Very extensively.

Q. Do you know whether the sales of Ray-Ban lenses have increased since 1936 substantially?—A. Probably five or ten times.

Q. Are those lenses sold in general competition with Soft-Lite lenses?—A. Very definitely.

Q. And in all the same forms that Soft-Lite lenses are sold?—A. Virtually.

Q. Are they sold by the same wholesalers?—A. They are.

Q. Who handle Soft-Lite lenses?—A. They are.

Q. Both the affiliated and independent wholesalers?—A. Yes, sir.

Q. Before I go to another subject, I want to show you a Soft-Lite molded blank. I think Mr. Isseks asked you what the number on that blank represented. Will you explain it if you can?—A. I don't know what it means. It is very likely a mark of the particular melt from which the glass came. That must be some factory marking.

Q. Does it have any relation to your serial numbers of your certificates?—A. No.

Q. That is all I want to know.—A. No.

Q. You did not imply by that number that it was in any way a source of detection, did you?

904 Mr. Isseks. Oh, no. I will stipulate as far as that is concerned; no.

Q. That is a factory production record, and the number on the lens has nothing to do with locating the source of supply of the lens?—A. No.

Mr. Lehrich. I will offer in evidence a form letter dated December 28, 1939, from the Soft-Lite Lens Company, which went to all the distributors on our Soft-Lite list, signed by Mr. R. G. Landis.

The Court. Without objection it will be received.

(Marked "Defendant's Exhibit R.")

Mr. Lehrich. I will offer in evidence sample contract of Soft-Lite Lens Company Inc., entitled, "Manufacturer-Distributor. Fair Trade Act contract," referred to in the last paragraph.

Mr. Isseks. Your Honor, I do not object to the form but I want it understood that counsel's failure to object does not concede that anyone signed the contract. The contracts will speak for themselves alone.

Mr. Lehrich. Will you stipulate that that is a sample of the contract entered into with our distributors in the various States in which Fair Trade Acts are applicable?

905 Mr. Isseks. I certainly will not, unless they actually were signed. If you show them to me and they are signed, all right.

Mr. Lehrich. Do you want every contract?

Mr. Isseks. If you show me signed contracts I will stipulate that anything signed is all right, but in the absence of seeing it I cannot stipulate it. How do I know they signed it? I have some information, through my associates, who may be misinformed, that only a limited number were signed.

Mr. Lehrich. I will dispute that. I will say that in every State where there is a Fair Trade Act enacted, we have at least one signed contract between our company and the distributor.

Mr. ISSEKS. They have ninety distributors and if they only signed twenty-four, I want to know that it was 24 or 56 or 37.

Mr. LEHRICH. I did not claim nor did I say the contract has been signed by only one distributor in each State in the Union. You are willing to stipulate this is a sample form of agreement signed in those cases in which they were signed?

Mr. ISSAKS. If any.

The COURT. If any?

906 Mr. ISSEKS. And if he will show me one of the contracts signed I will enter into a stipulation which can be put into the record that they signed contracts with A, B, C, D, E, and F on the dates in the contract and provided in the stipulation.

The COURT. Without requiring the defendant to put the contract in evidence?

Mr. ISSEKS. Yes; and if he had made the suggestion before I would have been glad to have entered into it at any time.

(Marked "Defendants' Exhibit S.")

Q. Mr. Singer, I direct your attention to paragraph 3 of Exhibit S, which refers to a schedule attached thereto, marked Schedule 1. Was that schedule 1 your stock price list distributed in January 1940?

Mr. ISSEKS. Your Honor, I will make the same objection of the same nature. If the schedules were attached to the contracts, we will enter into the same stipulation.

Mr. LEHRICH. Perhaps we can get it in this form: All I am trying to show is our stock price list is the only one which has any reference to the Fair Trade contract. The prescription contract makes no such reference. Are you satisfied with that?

907 Mr. ISSEKS. If counsel will furnish us with the proposed stipulation which recites therein that the annexed document, which I believe is a Government exhibit already, whatever the date is, that that was attached to this form and so attached it was signed by these various people so there will be no dispute about it——

Mr. LEHRICH. All I want to say on the record is that the only reference in any price list to the Fair Trade Act or schedule is in the stock price list and not in our prescription price list in which we made no mention of the Fair Trade Act or contract.

Mr. ISSEKS. I said that if counsel says it, all right.

The COURT. He just said it.

Mr. ISSEKS. All right.

The COURT. Then that stands conceded.

Q. Are the products enumerated in your stock price list of January 2, 1940, and your subsequent stock price lists, both of which there is some mention of in your Fair Trade contracts,

sold by the distributor to the retailer in exactly the same form in which you ship them to the distributor?

Mr. Isseks. I must object, your Honor, unless the witness knows as to what distributor it is.

The Court. If you know.

A. The answer is yes.

The Court. You do know?

The Witness. Yes.

908 The Court. And the answer to the question is?

The Witness. Yes.

Q. Does your company, under the Fair Trade contracts, attempt to establish the prescription prices charged by the wholesaler to the retailer?—A. No.

Q. And are those the instances in which the wholesaler does work for the retailer on the lens that he sends to the retailer?—A. Yes.

Q. Mr. Isseks asked you yesterday about various processes performed by the wholesaler before he delivered the lenses to the retailer. Are the lenses processed by the wholesaler as you described them for Mr. Isseks, listed in your stock price list?—A. No. Those are prescription items.

Mr. Lehrich. I want to offer in evidence, subject to verification and correction by counsel for the Government, a summary and break-down of the advertising, selling, and promotional expenses of Soft-Lite Lens Company for the 12½ years from 1929 through the first six months of 1941. The top page is a summary and the other pages give the individual items which comprise the whole.

Mr. Isseks. I do not want to be in any way facetious, your Honor, but the break-down starts with 1930 as I see it, and

909 the summary starts with 1929. As long as that is understood I have no objection.

The Court. There may be some explanation for that.

Mr. Isseks. I do not object, but I just wanted to point out that the break-down starts with 1930 and the summary with 1929. I do not object as long as it is understood.

Mr. Lehrich. I understand that discrepancy is due to the fact that the Optical Service Corporation operated for the first three months of 1929 and Soft-Lite for the balance, and that covers the expenditures for that period.

The Court. Very well.

Mr. Lehrich. The break-down starts with 1930.

The Court. Very well. It will be received.

(Marked "Defendants' Exhibit T.")

Mr. Lehrich. May I direct your Honor's attention to the total figures?

The Court. You may.

Mr. LEHRICH. From 1929 through the first six months of 1941 the total is $1,888,440.86.

Q. Mr. Singer, that sum was expended exclusively on Soft-Lite lenses?—A. Yes.

Q. Was any part of that expended on any Bausch & Lomb products other than Soft-Lite?—A. No. We did not spend
910 any money on advertising Thin-Lites, at least from 1928 on.

Q. Did Bausch & Lomb contribute any part of that sum of money?—A. No; that is our expense entirely.

Q. For your own sales organization, and for your own advertising and promotional work and material and all?—A. For Soft-Lite lenses. We just buy lenses from them.

Mr. LEHRICH. I offer in evidence letter dated October 6, 1939, from the United Kingdom Optical Company, Ltd., to Soft-Lite Lens Company, Ltd., and this has reference to the exhibits introduced by Mr. Isseks showing the contracts of both of those companies for the manufacture of lenses in England, and this is a cancellation of the contract.

Mr. ISSEKS. I have no objection, your Honor. It cancels the agreement set forth in Government's Exhibits 10-A and 10-B.

Mr. GLICKFELD. Only in Government's Exhibit 10-A.

(Marked "Defendants' Exhibit U.")

Mr. ISSEKS. Counsel has indicated he would like to have us stipulate it cancels the agreement set forth in Exhibit 10-B. I was mistaken when I made my statement but I will make the stipulation on counsel's statement.

Mr. LEHRICH. In other words, both were cancelled at the
911 same time although I am offering cancellation on only the one.

The COURT. It being conceded, it will be received and the concession will be recorded.

Q. Mr. Singer, before you made the contracts, Government's Exhibit 10-A and 10-B with Wiseman and United Kingdom, did you tell Bausch & Lomb you were going to make contracts with those two companies?—A. No.

Q. After you concluded the contracts, did you tell them about the contracts?—A. Yes.

Q. Before you went to England on that particular trip you had in mind making some such contract, didn't you?—A. No. I did not know what problem I would face. I knew we had to get manufacturing done in England with British labor and we wanted to use the best glass, and we saw Bausch & Lomb, and my object was to get glass in the raw form for manufacture in England.

Q. And before you went over you did tell Bausch & Lomb what your plans were?—A. That is right.

Q. Did you tell them you had in mind making a contract with anybody?—A. Kingdom or Wiseman? No.

Q. You did not know whether you would conclude a deal with them before you left?—A. No; I did not know what the situation would be when I got there.

Q. Did you have any negotiations pending with those companies before you went over?—A. No.

912 Q. But when you got back you did tell Bausch & Lomb about the contracts?—A. That is right.

Mr. LEHRICH. I offer in evidence letter dated March 22, 1937, from Bausch & Lomb Optical Company, lens sales department, to Soft-Lite Lens Company.

Mr. ISSEKS. I have no objection.

The COURT. It will be received.

(Marked "Defendants' Exhibit V.")

Mr. LEHRICH. I now offer in evidence reply to the last exhibit of Soft-Lite Lens Company to Mr. A. D. Buedingen, dated March 23, 1937.

Mr. ISSEKS. I have no objection providing the notation thereon is also included. There is a notation to "A. D. B. Ship to New York and not to customer," and then on the left hand side there is a notation, "Nat. S."

Mr. LEHRICH. I am offering it as it is. I don't know what the notations are myself. Take it as it is.

The COURT. Without objection it will be received.

(Marked "Defendants' Exhibit W".)

Mr. LEHRICH. I offer in evidence a letter dated December 2, 1938, from Bausch & Lomb Optical Company to Mr. N. Singer, referring to North Star Optical Company.

Mr. ISSEKS. No objection.

(Marked "Defendants' Exhibit X".)

913 Mr. LEHRICH. I offer in evidence copy of letter dated December 2, 1938, from Bausch & Lomb Optical Company, to North Star Optical Company, referred to in Exhibit X.

(Marked "Defendants' Exhibit Y.")

Mr. LEHRICH. I offer in evidence copy of a letter dated December 5, 1938, from Soft-Lite Lens Company to B. A. Ramaker, referring to the same subject matter.

(Marked "Defendants' Exhibit Z.")

Q. Mr. Singer, I direct your attention to Exhibit Z, and particularly the last paragraph in which reference is made to the conduct of an investigation. Are you familiar with that subject?—A. Yes.

Q. Was North Star Optical Company a wholesaler of yours at that time, at the time you received that letter?—A. Yes.

Q. Are they still a wholesaler of yours?—A. Yes.

Q. Was there any interruption in their status?—A. Not at all.

Q. Do you know the Uhlemann Optical Company of Chicago?—A. I do.

Q. Have they been a wholesaler distributor of yours for some time?—A. Yes.

Q. How many years would you say?—A. Oh, I think we dealt with Uhlemann since fifteen years or more.

914 Q. Did there come a time some years ago when you learned that Bausch & Lomb had discontinued business relations with Uhleman Optical Company?—A. Yes.

Q. Did your company discontinue business relations with Uhleman Optical Company?—A. No.

Q. Did they remain a wholesaler distributor of yours throughout?—A. Yes; and a very satisfactory one.

Q. And from the very time they started right up to the present date?—A. Yes.

Q. Mr. Singer, do you know any instances where employes formerly connected with the affiliates subsequently went into business for themselves and became wholesale distributors of your company?—A. Yes.

Q. Can you mention a few?—A. Oh, there were quite a number. Quinton-Duffens Optical Company—if I may have the distributors' list.

Q. Mention as many as you can.—A. Quinton-Duffens Optical Company.

Mr. ISSEKS. I have no objection to your showing him your notes.

The WITNESS. I gave one, Quinton-Duffens Optical Company.

Q. Where are they located?—A. They are in the Riggs territory and they formerly worked for Riggs. Silbert Optical Com-

915 pany, formerly Colonial Optical Company, and Joe Silbert, vice president of the Colonial, resigned and went in business for himself, and we, of course, sold him.

Q. Did he open up in the Colonial territory?—A. Yes. His original office was in Buffalo and he opened up in Buffalo. Bradley Optical Company. Dalton Bradley was formerly one of the important salesmen for the Riggs Optical Company.

Q. Where did he open up?—A. He opened up in Los Angeles in competition with Riggs in Los Angeles, and he is one of our good distributors.

Q. He was one of the defendants named in that decree that Mr. Seymour read in open court here the other day?—A. He was, and two others were Boll and Lewis. They opened up in Chicago, and we sold them and still sell them, and enjoy good business with them. They are gentlemen.

Q. Mr. Wahlgren was their employer?—A. I still say it. Hubbard, Leslie. Hubbard used to work for the Riggs Optical Company when I first knew him, and then I think he worked for Uhleman and then opened up for himself in the White-Haines territory and we sell him.

Q. He is a distributor?—A. Those are only distributors we are talking about.

The COURT. Do you have an invidious distinction between them and your acolade of the others being gentlemen?

916

The WITNESS. I tell you one thing. We sell gentlemen first if we can find them. We have had sad experiences because we have found some who were good customers and not gentlemen.

Q. Will you give us any more names?—A. Jenkel-Davidson, both active with Riggs Optical Company, San Francisco, and both very——

Q. When you say both active with Riggs, were they employed by Riggs?—A. Yes.

Q. Sales managers or salesmen?—A. Yes, they were both salesmen.

Q. And then they formed a partnership?—A. That is right.

Q. A wholesale company of their own?—A. And opened up in San Francisco, where Riggs have branches, and they are doing a very thriving business, and they are one of our good accounts. Miller Optical Company in Chicago and Schrader-Miller Optical Company in Chicago, and Mike Miller and Charlie Schrader were both salesmen for Geneva, which was absorbed by Riggs, and we have been selling them from the time they left Riggs, which was probably twelve years ago. Sam Nay, the head of the S. R.

917

Nay Optical Company, used to be branch manager in Battle Creek for White-Haines Optical Company, and he opened up for himself and he is one of our Soft-Lite wholesalers.

Q. Have you given me all the names you can recall?—A. Nine. There may have been a couple more.

Mr. ISSEKS. Did the witness say nine?

The WITNESS. I said nine, but there may have been more, but that is a good list.

The COURT. If this is a good point to stop, we will adjourn until two-fifteen.

(Recess until 2:15 p. m.)

918

AFTERNOON SESSION

NATHANIEL SINGER resumed the stand.

Mr. LEHRICH. At this point, if your Honor please, I would like to call counsel's attention to an exhibit which was offered the first

day of the trial, Exhibit 33, showing the percentages of affiliates before and after affiliation. It was called to my attention yesterday.

The COURT. As to the volume of business that was done with Soft-Lite?

Mr. LEHRICH. That is right. It was called to my attention yesterday that in some respects we had omitted one or two years. I have had that corrected right up to date, and I would like to offer this exhibit in place of Exhibit 33.

Mr. ISSEKS. No objection, your Honor.

The COURT. Then why not substitute it physically, and have the mark put on that.

Mr. Iss s. I will give the clerk the old Exhibit No. 33, and we will have the new 33 in its place.

(Marked "in substitution Government's Exhibit 33.")

Cross-examination resumed by Mr. LEHRICH:

Q. Mr. Singer, I call your attention to Exhibits 28, 29, 30, 31, and 32, offered in evidence by the Government, which deal
919 with a request by Mr. Platt Moody for a copy of your list of distributors, and a similar request by your company to Bausch & Lomb for a list of theirs. I ask you, was your list of distributors a matter of public information in the trade?—A. Yes.

Q. Did you publish your list every year in the Blue Book of Optometrists?—A. Every year, or every other year; but in between we published a list in the form of an honor roll in the trade journals.

Q. The correspondence that I just talked about was in 1939. Now I show you the Blue Book of Optometrists for the year 1938 and ask you whether the advertisement appearing on the first two pages after the cover page was an advertisement of your company [handing to witness]?—A. Yes.

Mr. LEHRICH. I offer it in evidence. I am offering just the ad.

Mr. ISSEKS. Is it just the one page?

Mr. LEHRICH. Yes; just the one page.

Mr. ISSEKS. No objection.

920 Mr. ISSEKS. I would like to call your Honor's attention to the ad, because it has right on the top, "Ethically publicized. Internationally accepted."

(Marked "Defendants' Exhibit AA.")

Q. Now, Mr. Singer, I call your attention to Government's Exhibits 103 and 103-A, those being first, the letter from Mr. Scott Sterling to you, with which he attached a proposed schedule of prices across the board on Plano-Meniscus lenses. Are you familiar with that schedule?—A. Yes, sir.

Mr. ISSEKS. I am sorry. He said "across the board." I don't know what that means. "Across the board."

The WITNESS. All sizes.

The COURT. I suppose it is a trade expression.

The WITNESS. Yes. All sizes.

Q. Then you wrote to Mr. Sterling on March 29, 1939, Exhibit 104, and told them that you were adopting as suggested precisely?—A. Exactly.

Q. And you did adopt it?—A. We did.

Q. And you published price lists for Soft-Lite Plano-Meniscus uncut lenses effective as of April 1st, 1939, putting in effect a schedule that Mr. Sterling sent to you with his letter of March 24, 1939, is that correct?—A. We did; yes.

921 Q. How long did you keep that schedule in existence?—A. Until we published a complete price list. That schedule was published on a mimeographed sheet, I think. It was a temporary list.

Q. The question was, how long did that schedule remain in effect?—A. About eight or nine months.

Q. Thereafter, on January 2, 1940, did you deviate from the suggestions made to you by Mr. Sterling?—A. Yes, sir.

Q. And published new prices in your printed price lists which you got out on January 2, 1940?—A. That is right.

Q. Now when you made the change in your printed price list did you take the question up with Mr. Sterling or Mr. Ramaker or anybody else at Bausch & Lomb?—A. No; we had some experience on it by then.

Q. Did you write them, telling them you were going to make a change?—A. No.

Q. Did you communicate with them in writing or orally, telling either one you were going to deviate from the suggestions made in the previous March?—A. No; there was no need of it.

Q. Have you a schedule pointing out what Mr. Sterling suggested and what you put into effect on April 1st, 1939, and
922 then the new schedule as you put it into effect on January 2, 1940?—A. Yes.

Mr. LEHRICH. Since that is in pencil form, I think I will have the witness read it into the record.

Mr. ISSEKS. Let us take the pencil form as an exhibit. It seems to me it is a better record.

The COURT. It will simplify it.

Mr. LEHRICH. We will take it in as an exhibit but I think the witness ought to explain it.

Q. Will you point out on that paper you have in your hand the differences between the proposed schedule which you put in effect on April 1, 1939, as compared with the prices you put in effect on January 2, 1940?—A. Yes. In the 50 millimeter size we made no

further change and no change in the prices to the retailer but made a change in the price to the distributor.

Q. Mr. Singer, will you first read the 1939 price in a particular column and then the 1940 one?

Mr. ISSEKS. I must object.

The COURT. Not if you are going to offer it in evidence.

Mr. ISSEKS. I do not dispute it if he says so.

The COURT. This is not in the nature of a record. This is in the nature of brief material.

Mr. LEHRICH. But I do not think it is clear without some amplification.

923 The COURT. You can give an illustration but I am not going to let him read it all over and then offer it.

A. In the 57 millimeter size we dropped the price 10 cents per pair.

Q. From what to what?—A. From $2.50 to $2.40, and in the 50 pair column from $1.80 to $1.70, and made a slight change in the distributors' cost. In the 63 millimeter line we made a change of from $3.10 to $2.95; and from $2.15 in the 50 pair column to $2.00.

The COURT. You have enough now to enable anybody to read the document intelligently. There is no objection to offering it in evidence.

Mr. LEHRICH. I will offer it in evidence.

(Marked "Defendants' Exhibit BB.")

Q. Mr. Singer, during all the time that you did business with Bausch & Lomb were there any variations between your list of wholesalers and Bausch & Lomb's list of wholesalers, if you know?—A. Yes.

Q. Do you know the differences at the present time?—A. I should imagine about 15——

Q. Do you know?—A. Yes.

Q. What are the differences?—A. Well, there are about fifteen that they do not sell to and about fifteen that we

924 do not sell to.

Q. Do you have the accurate figures? Have you checked with Mr. Ramaker during this trial?—A. Yes.

Q. Do you have the figures accurately?—A. I do not think I have them here. They are in the record somewhere. No; I do not have it here, Mr. Lehrich. I would say fifteen or sixteen wholesalers we do not sell to, and they do not sell——

Mr. ISSEKS. Again, can we have the actual figures? Our records show ten. Maybe we can get together on it. Maybe it is fifteen.

The WITNESS. We worked out the record.

Q. You have a schedule on it?—A. Yes.

Mr. LEHRICH. I will offer the schedule.

Mr. ISSEKS. Sure. That is the best way.

Mr. LEHRICH. That is all.

The COURT. When it is received it will be marked "Defendant, Soft-Lite Exhibit BB." I just want to get the record clear. When you said there were fifteen you did not sell to and they did not sell to, you did not mean the same fifteen?

The WITNESS. No, sir.

The COURT. You mean there were about fifteen you sell to and they do not.

The WITNESS. That is right.

925 The COURT. And fifteen they sell to and you do not.

The WITNESS. That is right.

Mr. LEHRICH. I have found the schedule, your Honor.

The COURT. Then let us have it marked.

Mr. ISSEKS. May I look at it a second?

Mr. LEHRICH. Yes.

(Marked "Defendants' Exhibit CC.")

Mr. LEHRICH. I will point out there are fifteen Bausch & Lomb distributors not on the Soft-Lite list and three of those distributors are sold by Soft-Lite as retail stock licensees. There are fifteen Soft-Lite distributors not on the Bausch & Lomb list and there are nine wholesalers——

By Mr. LEHRICH:

Q. Are those B & L wholesalers [indicating]?—A. No; we sell those as retail. Those are on our retail list, although their former business was wholesalers.

Q. You have nine wholesalers you sell as retail stock licensees?—A. That is right.

Q. Do Bausch & Lomb sell any of those nine?—A. I do not know whom they sell.

Mr. LEHRICH. I will offer as the exhibit the complete list

926 as of September 9, 1941, of Soft-Lite distributors.

Mr. ISSEKS. That is in once already.

Mr. LEHRICH. The one is a list of distributors and dates when they began distributing.

The COURT. I call these exhibits documents in the nature of brief material. That is really what they are. This is a collation of material which the witness has testified to.

Mr. LEHRICH. I do not think we can argue it in the brief unless I get some basis for it in the record. There are fifteen Soft-Lite distributors not on the Bausch & Lomb list and thirteen Bausch & Lomb distributors not on the Soft-Lite list, and of the fifteen Bausch & Lomb distributors three of those are sold by Soft-Lite as stock retailers.

Mr. SEYMOUR. The only way it becomes complete is if we put in the Bausch & Lomb wholesalers and that is not in yet.

Mr. ISSEKS. I have a list here that was furnished us and I think the only way the brief material is adequate is to put that in. If they do not want to put it in we will put it in now, which is as good a time as any. It was given to us by counsel for Bausch & Lomb.

Mr. SEYMOUR. It was furnished at the Government's re-
927 quest and it includes various matters which seem to me wholly irrelevant and immaterial. I do not object because it is a list but I object to it as irrelevant and immaterial. I am sure it is a correct list.

The COURT. Does it contain the list necessary to complement the evidence Mr. Lehrich has just put in?

Mr. SEYMOUR. It has in addition to the matters which Mr. Lehrich dealt with in his list, some things which the Government asked for as to Panoptik licenses, Loxit licenses, and so on, which it seems to me are wholly irrelevant and immaterial.

The COURT. If you contend it is immaterial I can receive it and exclude the immaterial part.

Mr. ISSEKS. I think they have a bearing on the question, but at this time I am not offering it for that purpose.

The COURT. Supposing for the present purpose we will receive only so much thereof as gives the list of wholesalers of Bausch & Lomb necessary to complete the information given in Defendants' Exhibit CC, and we will block out the rest.

Mr. ISSEKS. I am told that this list can only be understood by looking at the indications on the left-hand side. Maybe I am misinformed. I think perhaps I will withdraw my offer until we get Mr. Ramaker on the stand.

928 The COURT. Very well. The only exhibit that went in therefore is Defendants' Exhibit CC and the other exhibit is withdrawn.

Cross-examination by Mr. SEYMOUR:

Q. Mr. Singer, are there other sources of pink tinted glass in the United States besides Bausch & Lomb?—A. Yes.

Q. Was pink tinted glass imported into the United States from abroad prior to the outbreak of the present war?—A. Yes, sir.

Q. Do you know whether some pink tinted glass still comes in?—A. As most of it has been made in Germany I do not know how much of it would be coming in.

The COURT. You suggest none of it is coming in?

The WITNESS. I would not know. We get some stuff through Russia.

Q. But you are not importing any pink glass?—A. Oh, no.

Q. When you first went into the optical business and became familiar with your father's operations, I understood you to say

yesterday that there were a good many tinted glasses on the market?—A. Yes, sir.

Q. Was there a practice in the optical industry at that time of charging an extra for tint over white?—A. Yes, sir.

Q. Are tinted lenses still sold on that basis?—A. It de-
929 pends on the type of a man's practice. The dispensing optician would normally charge so much extra. The optometrist, depending on the type of practice, would either have a flat sum for the lens and frame complete, or for a lens alone, or if he is a little more commercial, so much extra.

Q. Now you told us yesterday, I think, that in 1922, 1923, and 1924 there were a number of tinted lenses on the market other than Rose-tinted lenses?—A. Yes, sir.

Q. Are there a number of other tinted lenses on the market today?—A. Yes, sir.

Q. Can you mention some of the other tinted lenses?—A. All those that were on the market in 1924 and new ones introduced since then. Viopake, a saffron-colored lens, and Azurine; Azulite, a bluish color—at least fifteen trade names used for a variety of rose-tint glass.

Q. Is that substantially more than there were in 1922 and 1923?—A. Oh, yes; because these names have been given very extensive national publicity. Before 1924 a wholesaler would sell that either under the name of the wholesaler or just "tint." Since then they have been adopting trade names and promoting them.

Q. Has most of the publicity given a tinted lens been given by the Soft-Lite Company?—A. I think we do more and have always done
930 more than all other absorptive lens companies in the country altogether, and are recognized as such; probably several times as much.

Q. Are goggles also sold in tint?—A. Yes, sir.

Q. You sell a few?—A. Yes, sir.

Q. Are there many tints and shades and makes of tinted goggles?—A. Yes, sir; all the tints I referred to are sold also in goggles.

Q. Have you any information as to the approximate number of tinted goggles sold in the United States?—A. Yes, sir.

Q. Approximately how many are there?—A. Why from just the surveys I have read I would say from thirty million to forty million a year sold in the United States.

The COURT. Thirty million to forty million pairs?

The WITNESS. Yes, sir; goggles.

The COURT. Tinted goggles?

The WITNESS. Of all goggles.

Q. I was asking particularly as to tinted goggles?—A. I was not thinking of industrial goggles. I am talking about the Gog-

gle Institute, or whatever they call it, and that is the figure they had.

Q. Does that include some white goggles?—A. I do not know. I do not know. I think that would come under industrial goggles, industrial glasses. Once it has a colored glass it is a
931 cheap variety, but I am talking of all goggles.

Q. Do you find the competition in the tinted lens market greater today than it was in 1922 or 1923?—A. By far.

Q. Are all wholesalers who want to handle tinted lenses able to get it?—A. Definitely.

Q. If they do not get it from you they get it somewhere else?—A. Yes, sir.

Q. Do many of them handle various kinds?—A. I should say that practically all wholesalers handle at least two or three tints, and when ordered by a retailer they will handle any tint they can get to fill a retailer's order. I should say all retailers handle several tints. Some of course push them harder than others, and some are prescribed more often than others.

Q. You try to get your wholesalers to push Soft-Lite?—A. Very hard.

Q. Now dealing with the matter of selection of licensees, retail licensees, as I understand it, that system really came into being in 1933.—A. Yes, sir; as now used.

Q. And do all wholesalers participate on the same basis in that system, that is——A. You talk about a system. We do not have such.

Q. Well, that is perhaps an inaccurate word for it. Let me put it this way: do all wholesalers, whether affiliated
932 companies or independent wholesalers, recommend licensees?—A. Yes, sir. All of our customers that are wholesalers are regarded by us as one class and treated the same way in every way, shape and form.

Q. That initial recommendation from a wholesaler is ordinarily connected with an order which he has obtained from a potential licensee, isn't it?—A. A stock order; yes, sir.

Q. Are the recommendations of wholesalers for cancellation of licenses made by them, by affiliated wholesalers and by independent wholesalers?—A. Yes, sir.

Q. You remember that there are in evidence here three forms of license or license applications; one which you testified was first used in 1927, and one used in 1928, and one first used in 1933. Did you discuss those forms with anybody at Bausch & Lomb before you adopted them?—A. No, sir.

Q. When you first became familiar with the optical industry and with your father's stores, was it the practice for manufacturers to distribute price lists which contained suggested prices from

the wholesaler to the retailer?—A. You mean the expected cost of the retailer when he purchased from the wholesaler?

Q. Yes.—A. Yes.

Q. And was that a practice in general use at that time?—A. Yes, sir.

933 Q. And is it in general use today?—A. Yes, sir.

Q. And you merely followed the practice that you found?—A. Yes, sir.

Q. Now we have had some testimony about Orthogon franchise dealers. Is there a difference between a semifinished Orthogon and an uncut Orthogon?—A. Only a certain class can handle a semifinished.

Q. The semifinished requires some further work?—A. Surface grinding.

Q. And that surface grinding requires particular tools?—A. Tools, equipment, and charts which you can get only from Bausch & Lomb.

Q. So that only Orthogon licensees with those tools and charts can finish a semifinished Orthogon Soft-Lite?—A. Yes, sir.

Q. Now does that also apply to uncuts?—A. No. Anybody can handle an uncut if he has an edging machine.

The COURT. An uncut glass is in a further state of advancement than a semifinished?

The WITNESS. An uncut is ground on both sides and finished except cutting and edging.

Q. Do you know of any case where you have sold Orthogon in any semifinished Soft-Lite form to persons who were not licensees?—A. We do not supply Orthogon Soft-Lite semifinished

934 to anybody who is not an Orthogon semifinished licensee because he would not know what to do with it. He has no chart or equipment.

Q. So that in the literature in which you have referred to Orthogon franchise dealer or Orthogon licensees and dealers, in which you talked about furnishing Orthogon Soft-Lite to non-Orthogon licensees, that applies entirely to Orthogon uncut?—A. Orthogon Soft-Lite uncut lenses only.

Q. And not to Orthogon Soft-Lite semifinished lenses?—A. No, sir.

Q. And let me show you Government's Exhibits 101 and 102 about which you were asked, and direct your attention particularly to the middle paragraph on page 2 of Exhibit 102. You can examine them to refresh your recollection [handing].—A. Mr. Seymour, did you say the third paragraph on page 2?

Q. The middle paragraph on page 2. You refer to cooperation between Bausch & Lomb and the Soft-Lite Company.—A. Yes, sir.

Q. To what did that refer?—A. Bausch & Lomb had just changed its discounts to wholesalers on Orthogon lenses from 33⅓ per cent to 40 per cent. Our buying formula was based on a list less 33⅓ per cent, plus additional for glass. Bausch & Lomb told us that they would extend the discount to us on the Ortho-
935 gon Soft-Lite to the 40 per cent which meant a reduction in cost, and they hoped that we would do what we can to encourage a greater use of Orthogon Soft-Lite lenses so that the increased volume would make up for the lower unit income to them.

Q. The cooperation referred to was the reduction in price to you?—A. Yes, sir; and we urged our wholesalers to take advantage of the opportunity of selling more lenses to more people so that we get all benefit by that cooperation that we got.

Q. Now was there a general price change, that is, in the structure of the price lists throughout the optical industry in 1939?—A. Yes, sir.

Q. And did you change the structure of your price lists at or about the same time?—A. Yes, sir.

Q. I show you a copy of Exhibit 115 and ask you if you can tell us whether you withheld publication of your price list, and if so, why?—A. Our prices went out on the date shown thereon, April 1st. I do not think that referred to our regular price list at all. Bausch & Lomb was coming out with price lists for little pocket editions that salesmen carried. We were getting up our prices which we intended to fit into those books. Unless the salesman had those little data books our price would have no home, so when Ben told us they are going to be delayed in
936 getting out those books we said we will wait until we get them out so when they get them out our prices will have a place to fit in. It is a small book, a price book, for salesmen.

Q. You said something yesterday about having mentioned your distribution policy to Mr. Hammele when you talked to him in 1924. Do you remember what, if anything, was said on that subject?—A. He said, "That is very good. We have heard that you are doing a nice job, a quality job."

Q. Was that all that was said on that subject?—A. That is all.

Q. As far as you can recall?—A. Yes; I don't think anything was said further about distribution. We were selling good wholesalers. The only comment he might have made would be that "We hope that you will not be selling seconds, because Bausch & Lomb does not sell seconds, and we feel if you did it would hurt the prestige of Bausch & Lomb, because you are going to advertise this as Bausch & Lomb made."

Q. Did Bausch & Lomb ever make any suggestions to you about the method of distribution to be followed by your company?—A. No, sir.

Q. Is that so as to the period before 1933 and also as to the period after 1933?—A. Always. Mr. Seymour, I think it is
937 all given in the capsule, as I said, our understanding with Bausch & Lomb was very basic; "you make the best and we will do the rest," and that is all.

Q. Do you feel you have always decided your own prices and policies for yourself?—A. Always.

Q. I show you a copy of a document which contains an extract which was read into the record and the document is identified as Exhibit 40 for identification——

Mr. ISSEKS. It was marked in evidence, wasn't it?

Mr. SEYMOUR. I do not think so. Exhibit 40 for identification.

Q. I show you a paragraph which appears on the fifth page of this exhibit which begins with the words "Controlled manufacture," and ask you if you will please tell us what those words meant?

Mr. ISSEKS. I object, your Honor. He asks what the words mean.

Q. What did you intend by those words?

Mr. ISSEKS. I object, your Honor.

The COURT. If those words are simple words as to which there is no dispute, I will sustain the objection.

Mr. SEYMOUR. I think first of all the words ought to be called to your Honor's attention.

The COURT. Yes; I assume they will be called to my attention. What are the words?

938 Mr. SEYMOUR. It is a paragraph that counsel read in for some purpose. It was the witness's language and I think he is entitled to indicate what he intended by that language.

The COURT. Very well. I will overrule the objection.

A. Well, as it says in the sentence, making it a little simpler, "Controlled manufacture from the sand to the finished lens is a guarantee of uniform high quality."

Q. Did you intend to mean you controlled the manufacture?—A. No. We have nothing to do with that.

Q. Was that intended to mean the care and precision of Bausch & Lomb manufacturing?—A. Yes, sir.

Q. And other processes of inspection and that sort of thing?—A. Yes, sir.

Q. Just to clear up one matter, Mr. Singer, do your competitors seem to have any difficulty in getting rose-tinted glass?

Mr. Isseks. I object, your Honor; I let it go before.

The Court. If he knows.

Mr. Isseks. It seems to me that for this witness to testify what American Optical Company and a half a dozen other companies can or cannot do, is improper.

939 The Court. If he knows. Perhaps he prepares on it.

The Witness. Yes; we know.

Q. What is the answer?—A. They have no difficulty in getting it, apparently.

Q. Are there sources of supply of such glass in the United States other than Bausch & Lomb?—A. Yes, sir.

Mr. Seymour. That is all.

Redirect examination by Mr. Isseks:

Q. I will start at the end and go back. First of all, who are your competitors; who you consider your competitors?—A. All those who make tinted——

Q. Oh, no: I mean the names. I am interested in facts and not conclusions.

The Court. You want to know which companies?

Mr. Isseks. That is right, and where they get the supply from.

Q. You say you know it, and now you tell me.—A. American Optical Company——

Q. Yes, sir. Where do they get the supply?—A. Pittsburgh Plate Glass Company.

Q. Who told you that?—A. The glass——

Q. Who told you that?—A. Do you want the answer?

Q. Yes; I want to know who told you?—A. The production manager or the head of the glass department of the Pittsburgh Plate Glass Company.

940 Q. What is the name?—A. I don't know the name, but those who deal with him do.

Q. No. You know it. Where did you get the information from?—A. I talked to the gentleman in Atlantic City at the last convention. I was introduced to him by the glass buyer of the General Optical, Mr. Clemens.

Q. Who is the man you talked to; the man from the Pittsburgh Plate Glass Company?—A. I told you I do not recall his name.

Q. Who is your other competitor and where does he get the glass from?—A. Continental Optical Company.

Q. Yes, sir.—A. The same source.

Q. Who told you he gets it from that source?—A. The same man who sells all these, or tries to sell them and tries to sell us.

Q. Who is the other source of supply? Who is the other competitor?—A. Shuron Optical Company.

Q. Where does he get his glass?—A. Same source, because their buyer was the man who introduced me to the Pittsburgh Plate Glass man.

Q. Those three competitors. Who is your other competitor, if any?—A. Titmus Optical Company.

Q. Where does he get his glass from?—A. Pittsburgh Plate Glass Company.

941 Q. So all those you have so far get theirs from Pittsburgh Plate Glass Company?—A. Those I have named.

Q. Tell me some others; or some other source in the United States besides Pittsburgh Plate Glass Company and Bausch & Lomb?—A. The Corning Glass Works.

Q. Do they make pink tinted lenses?—A. They make colored glass.

Q. For what purpose?—A. For optical purposes. They were the original makers of Cruxite; whether they still make it, I do not know.

Q. Who do they make glass for today who is a competitor of yours?—A. You said you knew.

Mr. LEHRICH. I object to that. The question was not about sources.

Mr. ISSEKS. The witness said he knew, your Honor, and I am trying to get first his memory.

The COURT. Do you know whether any of your competitors get their glass from Corning Glass Works?

The WITNESS. Putting it that way, I am not sure. I know they make glass.

Q. Isn't it a fact you are not certain whether or not they make any glass at all for the public today?—A. Up to a year ago, before the war?

Q. Yes, sir.—A. Yes; because they were the original makers of Cruxite.

Q. Who were they selling any Cruxite to at any time
941-A in the last ten years, as far as you know?—A. American Optical Company.

Q. When was that, what time?—A. That I do not know.

Q. Well, you said you knew.—A. I knew factories making colored glass for lens manufacturers in this country. I think I have given you much more definite information than most people would know.

942 Q. I want to find out, today, what other sources of supply there were.—A. Houze Optical Company are makers of rose-tinted glass.

Q. For whom?—A. Well, it was not told me whom they sell to.

Q. Who are your competitors?—A. They make the glass. I can do it for you this way: between Houze and Pittsburgh Plate

Glass and American Optical, which owned a plant in Hamburg, New York, rose-tinted glass is made for the American Optical Company, is made for Continental, Shuron Optical Company, Virginia Lens Company, Titmus Optical Company, and imported glass, depending upon the supply still available, is available from Fish-Sherman and other importers. Univis Lens Company used an imported rose-tinted glass for many years that they had made in Germany. We understand they now get it from Houze or Pittsburgh.

Q. I am going to go back. You testified before that Shuron, American Optical, Titmus and Continental were getting it from Pittsburgh, and you said some gentleman told you whose name you do not remember?—A. The head of the plant who sells that.

Q. You do not know his name?—A. No; but I can get it for you.

Q. All right, you get it for me. Do you have any other competitors but those four people, in pink-tinted lenses?—

943 A. Wholesalers?

Q. No; I want the manufacturers?—A. Lens manufacturers?

Q. Yes, sir.—A. If there is a lens manufacturer, he is a competitor. Simpson-Walther Lens Company.

Q. Do they make pink-tinted lenses?—A. Yes, sir.

Q. Who are they?—A. Simpson-Walther Company. They call it pink tint.

Q. But where are they located?—A. Rochester, New York.

Q. Whom do they buy their glass from?—A. I do not know. We know of the sources of supply, or they import the glass and grind it themselves.

Q. You say you do not know?—A. I have just given you the information.

Mr. Isseks. I move to strike out the rest of his answer after the fact that he does not know.

The Court. Yes; I will strike it out.

Q. You said you heard somewhere or other that the Houze Optical Company—outside of Pittsburgh?—A. They are near Pittsburgh; yes.

Q. You said you heard they were furnishing glass, pink-tinted glass, to somebody.—A. Yes.

Q. Who told you that?—A. I got that from one of the manufacturers.

944 Q. Who?—A. I do not know.

Q. What manufacturer?—A. I do not know. You know, you get that information.

Q. Did you ever talk to anybody in L. J. Houze about it?—A. I have never been at the Houze place.

Q. As far as you know, they never made any pink-tinted lenses?—A. I never laid the egg, but I eat it and like it. I never watched them make it.

Q. You never went down there?—A. We always know they are a source of colored-lens supplies. They did it for years.

Q. Did anybody tell you?—A. I never met anybody at Houze who were not perfectly satisfied with the source of supply.

Q. I want to know of any other source of supply in this country.—A. Houze.

Q. Who told you that?—A. People in the industry who buy glass.

Q. Name one.—A. I cannot tell you that.

Q. You said American Optical Company at their Hamburg plant you heard are making pink-tinted lenses?—A. No; I did not say that. Were making glass.

Q. I thought we were talking about pink-tinted glass.—A. No; we are talking about colored glass.

Q. Who told you they were making colored glass at Hamburg?—A. Who told me?

945 By the COURT:

Q. Do they make that?—A. It is the conversation we get.

Q. Do you know they do make it?—A. I am not sure. I said the American Optical glass plant at Hamburg.

Q. You certainly do not know whether they make rose tinted glass there?—A. No; but I do know rose tinted glass is made in this country, and I know who buy it. But you cannot tell who gets it from A, B, and C. But we know they get it from that source of supply.

Mr. ISSEKS. Yesterday, your Honor, I offered the prescription stock catalogue as Government's Exhibit 155. Counsel was supposed to take the opportunity to go over it, and I now offer it in evidence. Yesterday it was marked for identification. I shows Barnett & Ramel's price list for various kinds of Soft-Lite lenses.

The COURT. If I remember correctly he testified that he had two price lists, one of low prices——

Mr. ISSEKS. That is right.

The COURT. And one for the better glass.

Mr. ISSEKS. He said the one shown to him was second quality. Now this is supposed to be first quality.

The COURT. Then show it to your adversaries.

Mr. LEHRICH. We have not had it yet.

946 Mr. ISSEKS. If you haven't got it, here it is (handing to counsel). They can examine it as long as they want to. I was trying to move along.

I now offer in evidence, and I believe it is Exhibit 167 because we left the number, your Honor, distributor's price list as of April 1, 1941, bifocals.

The COURT. Of Soft-Lite?

Mr. ISSEKS. Yes, sir.

(Marked "Government's Exhibit 167.")

Mr. ISSEKS. Then I believe we reserved a number for the balance of the stock licensee price list, as of August 26, 1940. It was brought down to April 1, 1941. It includes the bifocals, and counsel for Soft-Lite Lens Company has furnished it to us. I think it is part of Exhibit 169.

The COURT. You were supposed to add some supplements, inasmuch as that exhibit has previously been marked. Then it will be physically fastened to the exhibit.

Mr. ISSEKS. This is a part that goes with Exhibit 169, prescription price list, brought down to August 26, 1940. I am not sure whether we saved a number or that it is added to Exhibit 169. We will add this to Exhibit 169, too, and put them all together.

947 Your Honor, yesterday I asked for the corporate minutes of Bausch & Lomb board, executive and operating committees, or any kind of committee, for the years 1924 and 1925. I would like to have them if I may, because I may want to use them in connection with the examination of this witness.

Mr. SEYMOUR. If your Honor pleases, I have considered that request, and I assumed that counsel must want to see whether there was any reference in those minute books to Soft-Lite problems. So rather than go to the expense of having somebody bring those books down, as I could not have them sent by mail, I got a responsible officer of the company to examine those books, and he assures me that there is no reference in those years, in any minute book, to the Optical Service Corporation or the manufacture of Soft-Lite. I assume that is what Mr. Isseks wants it for.

Mr. ISSEKS. That is what I want it for.

Mr. SEYMOUR. I will be glad to make that statement.

Mr. ISSEKS. I would much rather have counsel's word than the word of an officer of the corporation, a party in interest.

The COURT. You had the right of discovery before trial and could have asked for it long ago.

Mr. ISSEKS. Yes, your Honor.

The COURT. Under the circumstances now you will have to take counsel's statement.

948 Mr. ISSEKS. We will be perfectly willing to send somebody to Rochester from our staff, if we may have access to those.

Mr. SEYMOUR. We will be very glad to let you do that. I did not want to go to the expense of sending these books down. That was obviously what counsel wanted.

Mr. ISSEKS. That is right.

The COURT. Then if you want to go to that trouble you can do that.

Mr. ISSEKS. We will send somebody over the week end, if it is too much trouble for them to bring the books down.

By Mr. ISSEKS:

Q. Mr. Singer, you testified to having met Mr. Byrne some time in 1923 or 1924. Who was Mr. Byrne at that time?—A. Bausch & Lomb sales representative.

Q. Subsequently he became president of the Colonial Optical Company?—A. Yes, sir.

Q. And you said you were given a letter by him addressed to Mr. Hammele?—A. Yes, sir.

Q. Have you got a copy of that letter?—A. I said he handwrote it.

Q. Yes; I remember that very well.

Mr. ISSEKS. I call for the production of the letter your Honor.

949 Mr. SEYMOUR. Mr. Hammele is not a client of ours, and we have no access to his files. We have not found it among the company's papers.

The COURT. Did you look for that particular paper?

Mr. SEYMOUR. We looked generally. This is the first request we have had for that letter. I have not looked specifically for it. I should be very much surprised to find it, but I would be glad to look.

Mr. ISSEKS. I would like to have a search made, your Honor. It seems to me it would have a material bearing on the witness's credibility and the facts in this case.

The COURT. Very well.

By Mr. ISSEKS:

Q. You testified yesterday, at page 775 of the record: "Q. You then got into a discussion with Mr. Hammele which eventually resulted in Bausch & Lomb agreeing to make lenses for you from your French glass?—A. That is right." That was talking about the time you saw Mr. Hammele after Mr. Byrne came out of the room much to your surprise?—A. Yes.

Q. That was the first time you had seen Mr. Hammele?—A. Yes.

950 Q. Then your counsel said: "Q. And at that time you gave Mr. Hammele or left with him Exhibit 1-B, a list of your customers, list of Optical Service Corporation customers, and

a list of retail licensees?—A. That is right." That is your best recollection, isn't it?—A. I don't know that I carried that up with me.

Q. You testified that way yesterday.—A. I still say I do not know whether I carried that up with me. I gave it to him. I do not know whether I had it in my pocket or I mailed it to him subsequently.

Q. So if you testified to that yesterday you were wrong?—A. I would not say that.

Q. You said that you gave it to him. Did you give it to him or not?—A. I say I do not know that I carried it with me. I probably did not.

Q. So the answer here where it says "That is right" is now wrong?—A. I would not say that.

Q. Then what is the right answer?—A. I still tell you I am not sure whether I carried it with me or mailed it to him. I am giving you the answer as I remember it, not as it might well be.

Q. Oh, but you yesterday said "That is right."—A. That is right.

Q. When your counsel asked did you bring it up with you.

951 Mr. LEHRICH. The question was not "Did you bring it up with you," and I submit that it has been explained.

Mr. ISSEKS. The question says, "At that time you gave Mr. Hammele or left with him Exhibit 1-B."

The COURT. This is in the nature of cross-examination. Counsel is entitled to press the witness a reasonable distance.

Q. You were asked by your counsel, "And at that time you gave Mr. Hammele or left with him."—A. May I look at that?

Q. Oh, sure [handing witness trial minutes].—A. So that we read it together. I will say again that if I thought I could impress Mr. Hammele with the fine type of people we were doing business with I would have had it with me, and either left it with him or handed it to him; or it is possible that I did not think I needed it, and when I told him they are not to ship any specials to anybody except those we directed them to, he probably said "Then send me a list and we will observe your instructions." I don't think this thing is important. I am telling you exactly as I see it.

Q. I want to know what happened.—A. Exactly what I told you.

Q. Did you bring it up there or didn't you?—A. I cannot remember whether I brought it that time or mailed it to him.

952 Q. So when you answered your counsel's question yesterday you just gave any answer that occurred to you?—A. I did not do that.

Q. You said "That is right."—A. You are characterizing an answer that I gave, and the best answer I thought of at the time. If I tried to weigh all of the words when lawyers ask me——

The COURT. Never mind that. Answer the question.

Mr. ISSEKS. I will take the answer.

Q. When I asked you on page 43, the very first day you gave me the opposite answer. I said, "Q. Now when you went up to see Mr. Hammele you had those lists with you, did you not?—A. No; I did not." Which is right?—A. I still say either one is right. I do not know.

Q. All right, that is a perfect answer. That is what I want to find out. In other words, you just give us the answer when we ask the question.—A. You ask me what I do. I give you the best answer within my knowledge, and as the facts are.

Q. In answer to a question that I believe Mr. Seymour asked you, almost near the end of his interrogation, you were asked as to whether anything was said between you and Mr. Hammele with regard to manufacture, and you said he may have said
953 something about the fact you should not distribute second quality merchandise. Or did I misunderstand you? We have not the minutes typewritten, so I cannot read it to you.—A. He may have said to me in the course of the conversation, "Do you propose to sell seconds in this country?" I said, "No, we have not and we don't." He said, "Because we think the sale of seconds in this country on lenses made at the Bausch & Lomb plant could hurt the prestige of Bausch & Lomb."

Q. But isn't it a fact that the first memorandum about the subject matter shows that you were to get both the first and second quality lenses?—A. They store the seconds; they were to be billed to us eventually. We were to sell them at export.

Q. Was that in black and white?—A. Yes; you will find eventually they had quite a stock they were worried about.

Q. Yes; that is all in the record. I am talking about the initial conference.—A. It is right there in the record.

Q. The initial conference? You find it for me in the memorandum of the initial conference, Government's Exhibit 1 [handing to witness].—A. It says they differentiated in the packing.

Q. I see that.—A. That they would bill both; and as I re-
954 member all we called out were the first, because we were not in a position to sell the seconds abroad at the time, and as we developed the market for the seconds abroad we called them out.

Q. Is there anything in the record you or they were to store those seconds or rejects to export them?—A. Not in the record; no.

The COURT. Is there anything in that memorandum, Mr. Isseks, about the so-called special orders?

Mr. ISSEKS. Your Honor, there is. They were to fill all orders from their stock.

The COURT. You mean Bausch & Lomb would respond to them directly?

Mr. ISSEKS. Not in specific language, your Honor.

The COURT. I wish you would call my attention to any portion which relates to that "special" problem.

Mr. ISSEKS. Your Honor, I cannot find it, but I am sure counsel for the defendants will claim in a certain portion there is——

The COURT. You do not have to do it at this moment, unless you have your finger right on it.

Mr. ISSEKS. There is this on the second page. It says: "We will also make Punktal lenses from Soft-Lite glass on prescription orders."

The WITNESS. That is it. They were special.

Mr. ISSEKS. That is a special type of lens.

955 Mr. LEHRICH. It says on page 2, "Orders received from Kryptok Jobbers and Special Jobbers direct will be shipped to customer direct, accompanied by the usual SA, but will be billed to the Optical Service Corporation."

Mr. ISSEKS. I thought your Honor was directing my attention to prescription jobs. The paragraph read by Mr. Lehrich——

The COURT. I understood that all of these orders came to Bausch & Lomb from the jobbers were special.

The WITNESS. That is right.

The COURT. Ordinarily the order would go direct to Soft-Lite.

The WITNESS. That is right.

Mr. LEHRICH. There is a reference there to orders which come from the trade, which will be referred to Optical Service Corporation. The regular orders will be forwarded back to Optical Service and the specials will be made and charged to Optical Service.

By Mr. ISSEKS.

Q. In 1939 instructions were given by your company, were they not, to the Bausch & Lomb people, that no orders for Soft-Lite single vision lenses or blanks of any form should be accepted from the American Optical Company and two of its newly acquired wholesalers?—A. That is right.

Q. There is no reference in that instruction from Mr.

956 Buedingen to the lens sales department about the fact they are prescription orders?—A. That is what he is talking about.

Q. He says, "Supplementing notification of April 11, 1938, please note that instructions issued on the above date to the effect that no order for Soft-Lite single vision lenses or blanks of any form should be accepted."—A. That is right. That means stock

or prescription. Ship nothing in Soft-Lite lenses to those wholesalers.

Q. That is right. You testified yesterday that prior to 1933 there was no system of exclusion of any particular retailer, any retailer wanted to buy could buy from the wholesaler.—A. Any prescription account; yes.

Q. I now direct your attention to the stock price list dated August 1, 1931, and the prescription price list of the same date. You will see they are both the same date; aren't they, one stock and one prescription [indicating]?—A. Yes.

Q. They both have the same language on a page which I showed you the other day, and I again ask you if it is not a fact that you did have a system of exclusion, as shown by the language. "Soft-Lite Lenses are universally used because the practitioner's income from the use of Soft-Lite lenses is more substantial and protected"?—A. What I told you yesterday is still so. That
957 had nothing to do with a license plan. By trying to interest the ethical practitioners, those of reputation, we were keeping the ethical practitioner who was using Soft-Lite lenses in a position where he could in future as well as at the present continue to enjoy the usage of Soft-Lite lenses to his advantage.

Q. But if you did not have a licensing system prior to 1933 and anybody could buy, any retailer, why would you be interested in advising the prescription retailer that his income from the use of Soft-Lite lenses is more substantial and protected?—A. Do you want me to repeat it?

Q. You mean you have no other explanation than the one you have given?—A. That is right.

Q. You testified yesterday that you did discuss the licensing system prior to the time you put it into effect in 1933. You know, the stock licensees, retail licensees.—A. Yes, our license system.

Q. You call it a license system.—A. Or license plan.

Q. You said you discussed that with some of the wholesalers before you put it out?—A. Yes.

Q. Did those include some of the representatives of the affiliates?—A. Very likely.

Q. I want your best recollection.—A. Yes.

Q. Who?—A. Well, it depends on what kind of trip we
958 were making. I would say probably all of those whom we could cover in a trip from New York, and would depend on how long we had the idea in our minds.

Q. Do you recall what person or persons you talked to at that time, prior to 1933?—A. No. That was an idea of ours, a sales plan of ours. Whichever wholesalers we called on we said, "How would you like to see us come out with a plan of that kind? We

think it will give us an opportunity to build up the business with your customers and with us."

Q. I mean any person.—A. No.

Q. Did you talk to Mr. Hubbell?—A. Very likely.

Q. What is your best recollection?—A. I say very likely.

Q. Do you remember the conversation?—A. No. It was not important enough, Mr. Isseks, to make a trip on it. It was part of our paraphernalia for the next year. It was good, solid, sound, halo building and advertising.

Q. You testified yesterday that prior to putting out this new license plan you had complaints from various people.—A. Yes.

Q. Were the complaints in writing?—A. I do not think so. We would get it as kind of a little knifing when we would call on somebody.

Q. Who complained?—A. I don't know. Calling on a
959 wholesaler to sell him we would say, "Why don't we get more sales?" "Well, so many colors on the market look like yours, you cannot tell them apart, and people buy them for less, retailers buy them for less. What will we do about it?" My invariable answer was that there is only one Soft-Lite, that is the best, well sold, well made, well advertised—get behind it.

Q. You do not know who the complainants are by name?—A. No. It was a series of complaints. I tell you where most of it would come in. At our own company sales meetings. Fellows would say, "We hear more and more kicks about palming off, about a Soft-Lite not wearing as well as it might, and we find the lens was not a Soft-Lite," or something like that. I think we would get it at our sales meetings. It was not in writing, but it was enough to disturb us.

Q. You testified earlier today, I believe, that you attended various meetings of the salesmen of Riggs.—A. The wholesalers who had sales meetings.

Q. I would like to take Riggs first and we will come to the others.—A. Yes.

Q. From time to time did you attend the meetings of the salesmen of Riggs?—A. Yes.

Q. From time to time did you attend the meetings of salesmen of White-Haines?—A. Yes.

960 Q. Of Colonial Optical?—A. Yes, sir.

Q. Southeastern Optical?—A. Yes, sir.

Q. McIntyre, Magee & Brown?—A. Yes, sir.

Q. Did you ever attend a meeting of the salesmen of all the affiliates?—A. I never heard of such a thing.

Q. Did you ever attend a meeting of the executives of the affiliates?—A. Yes, sir.

Q. Where?—A. Either in Rochester, or an informal meeting perhaps in New York, when we were all at a party.

Q. Did you ever attend a meeting of the salesmen of the American Optical Company?—A. No, sir; we do not do business with them.

Q. I thought not. Did you ever attend a salesmen's meeting of any others of the affiliates?—A. Johnston Optical Company, Detroit, Michigan.

Q. Anybody else?—A. Benson Optical Company, Minneapolis.

Q. Anybody else?—A. E. W. Reynolds, Los Angeles.

Q. Before they became allied?—A. Yes, sir.

Q. Anybody else?—A. You are kind of rushing me. I will say every wholesaler who had a sales meeting we would get in on.

Q. No; I want to know the names.—A. I or my representative, you mean?

Q. You. I am talking about you.—A. Uhlemann Optical Company, Belgard-Spiro, Inc.

961

Q. That is Mr. Wahlgren's present firm?—A. No; that is when Austin Belgard was in there. Now they are just using the name—changing it now gradually to "The House of Vision."

Q. But it is Spiro & Company?—A. Yes. Walman Optical Company, Minneapolis. You know with some of the smaller wholesalers we initiated the meetings. I would suggest, "Get in all your salesmen, your branch men, and let me give them a talk."

Q. Can you tell us any others?—A. Milwaukee Optical Company, Quinton-Duffens, the old Klatorik Optical Company in Rochester. May I explain something?

Q. Give us the names, and we will give you an opportunity.—A. On this subject?

Q. I am sorry, you just go right ahead.—A. You don't want me to explain. All right.

Q. Give me all the names. I will come back to it, or counsel will bring it out if I forget it.—A. No; I just wanted to tell you that. May I have a list of our wholesalers, and then I can tell you.

Q. Sure, the exhibit is here. Here it is right here [handing to witness].—A. Berks Optical Company, Bradley Optical Company, Diederich Optical Company. If I would talk to groups of these together, would that be all right?

962

Q. Fine. Sure.—A. Then we can take in most everybody, because we had them together at one time or another.

Q. You mean you called a meeting of all Soft-Lite representatives?—A. Wholesalers and their organizations.

Q. I am talking about their own groups alone.—A. But the smaller ones do not have it. The medium sized ones do.

Q. Do you want to go down the list? Give them to me individually.—A. You said groups. Do you want it in groups or individually?

Q. I will take them individually, and then I will let you answer by groups.—A. Any way you like. Hilbert Optical Company, in Baltimore. I gave you Johnston in Detroit. Southwest Optical Company. Superior Optical Company in Los Angeles. That was this past year.

Q. Now, you say in addition to having conferences with salesmen of particular companies you also had conferences with groups of companies?—A. Yes.

Q. Did you have annual or semiannual meetings of all Soft-Lite Representatives, distributors?—A. Whenever we would have meetings at affiliates we would take our same trained seal act and give the same data, program, advertising, and ideas to our wholesalers in that territory.

Q. You would have a meeting of an affiliate, let us
963 say, where, in Columbus, Ohio?—A. That is right.

Q. And only the affiliate representatives?—A. No; if that was the affiliate meeting that we were invited to they would not have another wholesale representative present. They would have us in at the meeting.

Q. And you would call a special meeting of the other people?—A. In Ohio. In most cases in Cleveland; and invite all of the wholesalers that we sell to in Ohio in that territory to come up to Cleveland; and we would put on the same show.

Q. Did you have any meeting where you had all your distributors, including the affiliates?—A. Yes.

Q. That was one of your meetings?—A. Yes.

Q. When was the last time you attended a meeting of the representatives of the affiliates?—A. I think a couple of—in 1940 or 1939.

Mr. SEYMOUR. If your Honor please, I protest that this is not proper redirect.

Mr. ISSEKS. The witness testified that they treated them equally. I am trying to find out whether they did.

The COURT. We are not adhering too closely to that definition here. Because here there is a hostile witness who was examined on direct which was really cross, and your cross was really
964 direct, and his redirect is really recross.

Mr. SEYMOUR. I do not want to be technical, but Mr. Isseks seems not to be confining his questions to anything that has gone in before.

The COURT. That may be, and I will of course have to give you a further opportunity for recross with respect to new matter.

Q. You said 1939 or 1940. Where was that?—A. Are you talking about an affiliated wholesaler?

Q. No; only executives of the affiliates.—A. Either in New York City or Rochester.

Q. There were Bausch & Lomb people present, too?—A. Yes.

The COURT. When was that?

The WITNESS. 1939 or 1940.

(Short recess.)

Q. Mr. Singer, you testified before we went to recess that you attended a meeting of the executives of affiliates, I think you said either at Rochester or New York.—A. Yes.

Q. And there were executives of Bausch & Lomb there?—A. Yes, sir.

Q. Were there executives of any other companies than the affiliates of Bausch & Lomb and Soft-Lite?—A. No.

Q. Did you ever attend any other meetings of Bausch & Lomb executives and Bausch & Lomb affiliate executives?—
965 A. Yes.

Q. Were there representatives of any other companies, other than the affiliates of Bausch & Lomb and Soft-Lite?—A. I don't think so.

Q. And in the last 16 years how many meetings of that type have you attended, as distinguished from meetings of representatives of a single affiliate only?—A. So that I give you a factual answer, may I make a comment? I do not want to use the word "explain." When you say "attended" you mean sat in at the whole meeting? That never happened.

Q. No; you were present at part of the meeting?—A. Before or after dark. I would come in at a dinner in the evening on the social end. I might come in part of the time when questions of the general industry were discussed.

Q. You were invited? That is my question.—A. I was invited more from the social than the other angle.

Q. But you were invited and you attended?—A. Yes; part of the time.

Q. Over the 15-year period from 1925 on? That is 16 years.—A. Yes.

Q. Approximately how many of those affiliate Bausch & Lomb meetings did you attend?—A. Oh, three.

Q. During the whole period, three?—A. Yes; because the only one who was good enough to invite me was my friend Ben.
966 Q. Mr. Ramaker?—A. Yes.

Q. He was present at the meetings, too?—A. Oh, yes.

Q. You said one was either 1939 or 1940, either at Rochester or New York, and when were the other two?—A. The other two?

I do not know. I do not know how often they met. I would say maybe two years before that.

Q. Now you testified the other day that there was a Cruxite tinted lens put out some time just prior to the time you put out your new license plan. That is my recollection of your testimony.—A. At about that time, 1932 or 1933, and our license plan came out in 1933.

Q. Was Cruxite distributed under a license plan?—A. It is a patented product. I don't think so.

Q. As far as you know are any others of the rose-tinted lenses or pink-tinted lenses put out under any license plan?—A. No.

Q. You said you made no differentiation between the wholesalers, that is affiliates, and other wholesalers?—A. That is right.

Q. Did you ever receive any correspondence from any other wholesaler other than an affiliate similar to the letter of August 8, 1940, from Mr. Wetmore to you, with copies to Messrs. Hubbell and Ramaker, Government's Exhibit 136 [handing to witness]?

967 Mr. SEYMOUR. I object to that question, to the form of it, if your Honor pleases.

The COURT. The form is satisfactory. Did you ever get any communication similar to this? I suppose on that subject matter.

Mr. ISSEKS. I do not mean to identify it except as relating to price. It relates to prices to the wholesaler—from Soft-Lite to the wholesaler.

A. I do not recall, but not on this. We would not get a letter on this particular subject from anybody else.

Q. You were interrogated by your counsel regarding Government's Exhibits 98 and 99, which are the prices on Sport-Lite and Overglass.—A. Yes.

Q. If I forgot to ask you this question, and I may have asked you before, the lenses in those goggles were all lenses made by Bausch & Lomb?—A. Yes.

Q. You testified yesterday about the volume of purchases by Riggs Optical Company up to and including July 1924, and then your counsel skipped I think today to December 1924.—A. Yes.

Q. In August 1924, the record which you were shown yesterday indicates that the Omaha, Nebraska, office of Riggs, where Mr. Wahlgren was, purchased $416.72 worth of products. Was that of Thin-Lites or Soft-Lites?—A. I should say that was all Thin-Lite. Look a year previous and you will find a similar

968 shipment. Apparently they replenished.

Q. Yesterday you were definite that those were all Thin-Lites?—A. Yes.

Q. And everything else prior to that time was Thin-Lites?—A. Yes.

Q. Have you any definite recollection that the $416.72 was of Thin-Lites?—A. We have no records. The first time he bought Soft-Lites was when I went out on that trip in August or September.

Mr. Isseks. If I said 1934, your Honor, I meant 1924.

The Court. I understood you meant that, yes.

Q. Your counsel when he asked you a question about the 15.53 and 15.91 put in the question Soft-Lites lenses made by Bausch & Lomb.—A. He said Bausch & Lomb made glass.

Q. As distinguished from the French-made glass that may have been fabricated by Bausch & Lomb?—A. No; as distinguished from Bausch & Lomb ground lenses of our French glass.

Q. Were there any sales prior to that time to Wahlgren's company at Omaha of the French-made glass ground by Bausch & Lomb?—A. I should say yes, all of the sales in October and November.

Q. Were Soft-Lite lenses?—A. Yes.

969 Q. Made by Bausch & Lomb, but not from their own glass?—A. Now wait a minute. We had stocks of Soft-Lite lenses ground from our French glass by Bausch & Lomb, and that is what we shipped, but we did not have any made from Bausch & Lomb glass until December 1st or later.

Q. In other words all glass sold by you after December 1, 1924, was Bausch & Lomb made glass?—A. Yes, sir.

Q. Your counsel interrogated you about your conversations with the Bausch & Lomb people before you went to England in 1938, and you told him that of course you could not have talked to the Bausch & Lomb people about the terms of the contract because you did not know what was going to happen.—A. That is right.

Q. But you are not repudiating the testimony on direct that you did have conversations with the Bausch & Lomb people before you went over?—A. Yes.

Q. You are not repudiating it?—A. No; I do not know what it is about.

Q. You did have conversations regarding the subject matter?—A. What subject matter?

Q. The fact that you were going over,—A. Yes.

Q. And the fact that the market was disturbed over there?—A. Yes, sir.

970 Q. Now on these registered protection certificates isn't it a fact that you considered it a flagrant violation of the Soft-Lite license policy if a protection certificate was furnished by a wholesaler to a nonlicensed retailer?—A. Well, that is pretty strong language. We may have said that in an instance. What we wanted done was to have our certificate used in connection with genuine Soft-Lite lenses, and if the lenses were supplied to some-

body that was not supposed to get them we were not always sure that the certificate accompanied it or that they were always genuine Soft-Lite lenses. We did not always tell that to wholesalers.

Q. You did not have to use any strong language to your representatives; among yourselves you did not have to kid yourselves and use strong language?—A. It all depends.

Q. This halo business did not obtain among yourselves, did it?—A. Oh, yes; we lived what we thought.

Q. In order to emphasize something it was not necessary for Mr. Landis to tell it to someone else and then have it told to the salesman?—A. Well, we lived it and sleep it.

Q. When you wrote something you meant it?—A. Yes.

Q. Mr. Landis's position in 1929 in the early part of the year, what were his general functions in the company?—A. He was vice president and assistant general manager.

Q. And a director?—A. And a director, yes.

Q. And he had charge of all the licensing policies,
971 did he not?—A. Are you talking about our license plans?

Q. Yes.—A. Well, as part of the management; yes.

Q. That was his bailiwick, if I may use that term; that was his business?—A. I think you stress it more than it was stressed to us.

Q. The other day you suggested that he knew more about it than you did.—A. Now wait a minute, Mr. Isseks, let us get together. That is two different questions. I know the general story. He had people assisting him with some of that. No one man can handle all the details of a business like ours.

Q. You agree with what Mr. Landis told Mr. Summers, your own salesman, in this exhibit, care of Bausch & Lomb Optical Company, Chicago, Illinois, Government's Exhibit 79, on April 7, 1939——

Mr. ISSEKS. I am sorry, your Honor, I will have to read it.

Q. (Continuing). "Will you please call on Swenson & Pearson of 935 Belmont Avenue, Chicago, Illinois, who are Prescription Licensees, originally sold through Riggs. Advise them that their license is being cancelled because of their violation of the clause restricting them to the sale of Soft-Lite Lenses at retail only to the consumer.

"For your information, The Reliable Optical Stores of
972 Lynchburg, Virginia, an undesirable type of concern, have been supplying Soft-Lite lenses and, incidentally, the store whose source of supply we have been trying to trace for some time. You will remember I discussed this matter with you some time ago and it was felt that they might be receiving their supply originally from Riggs—through some account in Wisconsin.

"They were shopped on a Univis trifocal, Soft-Lite No. 3. These were ordered through Chicago, made up in tinted Univis and supplied to the Reliable Optical Company by Swenson & Pearson. The Soft-Lite protection certificate No. 0133015 was supplied with this job, which constitutes a very flagrant violation of the Soft-Lite license policy in supplying a protection certificate to a non-Licensee and without the lenses supplied being Soft-Lite. This certificate number is that of Riggs."

A. Ah, that is the point. A thing like that would arouse anybody's blood pressure in Soft-Lite. When you use a certificate that is not genuine, then you tell the salesman plenty. You go to town.

Q. Was it a very flagrant violation of the Soft-Lite protection policy to supply a protection certificate without the lens supplied being Soft-Lite?—A. That is the important point, the second half, yes. I am telling you on what the emphasis is.

973

Q. Do you disagree with what he says?—A. No; I agree with him.

Q. He says: "The Reliable Optical Stores were then shopped again for a half pair of single vision lenses. A genuine Soft-Lite was supplied at a cut retail price and protection certificate No. 0302245 was included. This is Schroeder-Miller's number. Advise Schroeder-Miller and Riggs that you are taking this action and please report any details, as a result of your call and we will then send a formal removal letter to Swenson & Pearson." Schroeder-Miller was a wholesaler, was he not?—A. Yes, sir.

Q. You were able to find out, were you not, by getting hold of the certificate where the stock lens was shipped, in those cases?—A. Frankly, we were not too sure, because Schroeder-Miller picked up some of their Soft-Lites from Riggs, and they might have had some of their certificates.

Q. He says they have no trouble.—A. We would not bank on it so much. I told you, it was a little bit haphazard.

Q. But in that particular instance you used the number as a means of finding out the source of supply?—A. That is the exception that proves the rule. I say I do not think we have half a dozen of those out of 4 million.

974

Q. I know it is all I have, and I wish I had all that happened.—A. It did not mean anything, so we did not use it.

Q. Your records prior to 1938 are unavailable to us. I understand the correspondence has been destroyed in the regular course of business, so we do not have the records prior to 1938.—A. You are asking me for my memory, and I give you my word I do

not suppose there was a dozen. It would not mean anything. There was no way of checking.

Q. The records prior to 1938 do not exist, do they?—A. I do not know. If that is what you were told, that is so.

Q. The ones you mentioned included the 15 years, didn't they?—A. No; we did not start——

Q. No; 9 years.—A. Yes. We sold a good many pairs of lenses in that time.

Mr. Isseks. My associate tells me, your Honor, that we were informed they have no correspondence prior to January 1, 1939, so we only have records of correspondence since January 1939.

Mr. Lehrich. That is licensee correspondence Mr. Iseeks is talking about.

Mr. Isseks. That is what I am talking about.

Mr. Lehrich. You did not use the word "licensee."

Mr. Isseks. I beg your pardon, licensee correspondence.

974-A I meant in connection with these licenses, and I mean with regard to those.

Q. I show you Government's Exhibit 180, and ask you if it is not a fact that you made efforts from time to time to locate the source of supply of Soft-Lite lenses [handing to witness]. See if that does not refresh your recollection, a letter from Mr. Landis to Riggs Optical Company.—A. I do not recall seeing this before, but that is O. K.

975 Q. Part of your general policies?—A. What do you mean?

Q. To make inquiries as to the source of supply of an undesirable type of retailer, where he gets Soft-Lite lenses—by mistake, I will say?—A. It does not happen very often, but that would be information that we would see from time to time.

Q. I show you a letter from McIntyre, Magee & Brown to your company and ask if it is not a fact that requests were made by wholesalers from time to time to see if you could trace a certificate that came from an allegedly improper source?—A. You see these requests were rare. I can well understand. It comes in this case where the retailer says, "Here is a case in which a retailer sells a consumer a pair of genuine Soft-Lite lenses and he gives a certificate with it," and he says, "We think these look like imitations to us." Now the reason we have not had many of these requests was because all we could do was see that the certificate apparently was shipped by us to the wholesaler, John Jones, and that is all.

Q. You did get inquiries from wholesalers?—A. Very few.

Q. Now you were asked this morning about Wahlgren and Hubbell being on this committee. I think they called it the——A. Consulting executive committee.

976 By the COURT:

Q. Did Mr. Hubbell own the White-Haines Company?—A. Well, at that time I think he was the head of the business and Mr. White was retiring, and he was a director——

Q. You do not know whether he owned all of the stock?—A. No; I am not sure. I know he was a substantial stockholder.

Q. Certainly Mr. Wahlgren did not own all the stock of the Riggs Optical Company?—A. No.

By Mr. ISSEKS:

Q. Now when you were asked about that this morning, my recollection is you said——A. About which? This?

Q. About the consulting executive committee?—A. Yes.

Q. I believe Mr. Lehrich asked about it this morning and asked the nature of their duties and why you took them on?—A. Yes.

Q. When I asked you about that the first day of the trial, page 144, I asked you this question, and you gave this answer: "Q. Did these gentlemen, Mr. Singer, continue as a consulting executive committee of Optical Service Corporation for a number of years?—A. Very frankly, Mr. Isseks, it meant so little to me I did not know it ever happened. I thought it was just chatter I had given them and we put it in our books and I do not know
977 why now."—A. I was talking about the terminology—"consulting executives."

By the COURT:

Q. Did you pay them considerable sums of money for their services?—A. Why, it amounted to about $5,000 a year in one case. They were not supposed to draw that. The way it happened was that Dad said, "If you can get two people, men, to coach you in the business it is worth some money for you to do it," and I would say it was probably worth $5,000 a year to us.

Q. And did Riggs Optical Company and White-Haines Optical Company know about this?—A. Did they? They were the heads of the business.

Q. Did the company know it as distinct from those two heads?—A. I would not know that.

Q. You did not know?—A. No.

By Mr. ISSEKS:

Q. You testified to some personal ventures with Mr. Wahlgren. When was the first personal venture you went into with Mr. Wahlgren not related to the optical industry?—A. I could not tell you that.

Q. Approximately. Take the first year. The month I refer to is on February 10, 1925.—A. Yes.

978 Q. Now in relation to that date when was the first personal venture you went into with Mr. Wahlgren?—A. I would say the end of that year or beginning of the next.

Q. And was Mr. Hubbell in the same venture.—A. Yes.

Q. And all the personal ventures you went into with Mr. Wahlgren, Mr. Hubbell was a party to?—A. Yes.

Q. And how many ventures were there all told?—A. Oh, seven.

Q. You say seven?—A. Six or seven.

Q. Now you also testified this morning that you and Messrs. Hubbell and Wahlgren met at Rochester some time after 1924. I forget the date you fixed.—A. I did not fix a date.

Q. I do not want to misstate your testimony. You correct me if I am wrong. Did you ever meet Messrs. Hubbell and Wahlgren in Rochester?—A. Yes, sir.

Q. You fix the first date in relation to February 10th, having in mind that February 10th is a book record and nobody can dispute that. On February 10th you met these gentlemen as a consulting executive committee?—A. That is right.

Q. Having in mind that date—by that time you knew them very well?—A. Yes.

Q. You would not have made them members of your consulting executive committee unless you knew them that way?—A. Well,

979 I knew them well by reputation, and I knew Mr. Hubbell better than Mr. Wahlgren. I got to know him in a hurry. I spent a lot of time with him in the Fall—well, when we sold that fellow——

Q. In the Fall of 1924?—A. Yes.

Q. And what time in relation to February 10th did you meet Messrs. Wahlgren and Hubbell at Rochester? Before or after?—A. I should say very likely after.

Q. And how soon thereafter?—A. Well, it would have been at least four or five months after that. And I can tell you why.

Q. Now, where did you meet them. You said you met them at Rochester. Did you meet them at the factory or the hotel, and by factory I mean the Bausch & Lomb plant?—A. You mean did I have a prearranged meeting?

Q. Oh, no. Did you see them there?—A. Yes.

Q. Where was that?—A. Very likely at the hotel.

The COURT. Together?

The WITNESS. Yes; at the Sagamore Hotel we would run into them at breakfast and meet them, as they were stopping there.

Q. And you said about four or five months?—A. Yes, sir; and I said I can tell you why.

Q. I want to move along if I can. Did you recall meeting them more than once after the four or five months' period; that is approximately June or July?—A. You mean in those six months?

980 Q. After those four or five months.—A. I doubt it because if I had occasion to meet with them I met with them where it is to their convenience; that would be either Omaha, Chicago, or Columbus.

Q. I have not that in mind. Did you meet them after that more than once from 1925 to 1930?—A. From 1925 to 1930? Yes, a number of times. I thought you meant in that one year, the remaining six months.

Q. In the remaining six months did you meet them at all?—A. I would say yes.

Q. More than once?

Mr. SEYMOUR. Is counsel talking about a meeting in Rochester, or anywhere else?

Mr. ISSERS. I am talking about Rochester. I think the witness understands.

A. You are talking about Rochester?

Q. Yes.—A. I would say once. I would say perhaps once.

Q. Or twice in 1925—in Rochester?—A. I doubt it would be twice, because I do not think they would be there together twice in six months.

Q. Once in the year 1925. I take your answer because you were there and I was not.

The COURT. Once after the meeting in February?

The WITNESS. That is right.

981 The COURT. That would make it twice.

The WITNESS. That is right.

Mr. ISSERS. That is the way I thought. There was some confusion.

Q. You testified already that some time after February 10, 1925, within four or five months, you met both of those gentlemen?—A. Some time subsequent to four or five months.

Q. Within the year 1925?—A. Yes. I say I think it was just that once.

Q. And you say it was the Sagamore Hotel?—A. Very likely, or——

Q. It was during that visit. Was it more than one day as far as you can recall?—A. I cannot recall a definite visit and I cannot give the days.

Q. That is all right. Did you meet at any time with those two gentlemen and any representative of Bausch & Lomb? The

question is whether the four or five or six of you were at one place at one time?

Mr. LEHRICH. When is this? Still 1925?—A. It might have been.

Q. What is your best recollection?—A. I tell you frankly that I do not recall. The reason I tell you, I must have seen them once, or perhaps twice, because I went to Rochester often
982 and I had just come back from a four months' Coast trip and I am going to Rochester often and sometimes one may be there and sometimes both, and I saw them there, and when I am there I go about my business, and if it was at the plant——

Mr. ISSEKS. I am sorry, your Honor.

The COURT. Yes; that is all, isn't it?

The WITNESS. That is all.

Q. I am trying to ask you if you talked with those two gentlemen and any representatives of Bausch & Lomb at the same time in 1925?—A. I really do not know.

Q. All right. That is an answer. Now taking you into 1926, did you meet those two gentlemen in Rochester in the year 1926?—A. I should say I did.

Q. More than once?—A. I think so.

Q. How many times?—A. It may have been a couple times.

Q. More than a couple?—A. I do not recall.

Q. All right, sir. Did you meet those two gentlemen with any representatives of Bausch & Lomb, at the same room at the same time at either both of those visits or one of those visits?—A. I may have.

Q. What is your best recollection?—A. Whether anybody from Rochester and they and I were in the same room at the same time?

Q. That is right?—A. Very likely we had lunch to-
983 gether. We would be the guests of somebody from Bausch & Lomb.

Q. What is your best recollection?—A. On that basis I would say yes.

Q. What about the year 1927—the same questions?—A. Mr. Isseks, naturally I did not make a category of when I meet people like that. I am just guessing.

Q. Please don't guess.—A. What I mean to say, it did not mean enough to me.

Q. Is your guess based on past experience?—A. My guess is based on how often I would go to Rochester and how often I met wholesalers. They had their wholesalers and their affiliates came there——

Q. Mr. Wallgren was the head in 1925 of what you considered the largest wholesaler-distributor in the country?—A. Yes.

Q. And Mr. Hubbell was the head of the second largest wholesaler in the country?—A. Yes.

Q. And they both in 1925 were members of your consulting executive committee?—A. Yes.

Q. And you were seeing those gentlemen whenever you could, were you not?—A. Yes.

Q. And if you were in Rochester at the same time you talked to them?—A. Very true.

Q. You did not duck them?—A. No, sir.

984 Q. And they had business with Bausch & Lomb too, did they not, of their own?—A. Yes.

Q. You knew as a fact, did you not, even in 1923 and 1924, that both of those companies, Riggs and White-Haines, were purchases of ophthalmic goods from Bausch & Lomb?—A. Yes, sir.

Q. And they were large purchasers, as far as you knew?—A. Yes, sir.

Q. And did you ever in 1925 and 1926 talk with the Bausch & Lomb people and those two gentlemen about matters relating to the optical industry in Rochester?—A. In a general way; yes.

Q. My question is, and the answer is yes or no——A. Yes.

Q. The same thing went on in 1927, 1928, and 1929, did it not?—A. May I answer it this way: Whenever they, and anybody in Bausch & Lomb, and I met together we would discuss the optical business. That was the principal subject of discussion and that was the one pleasure and glory.

Q. Sure, and at that time there was not any lawsuit, as far as you know, by the United States Government, the United States was not going after you with Bausch & Lomb?—A. Fortunately or unfortunately——

Q. The answer is yes or no.—A. No.

Q. You talked to those fellows and you were talking

985 freely about your business, were you not?—A. Yes, sir.

Q. And those two gentlemen were on your consulting executive committee?—A. Yes, sir.

Q. And you did not hide anything from them, did you, as to your policies?—A. Policies; no.

Q. In relation to the different phases of your business?—A. Insofar as it concerned information I could get from them that would help me.

Q. And you were consulting with them, were you not, as to price policy while they were on your consulting executive committee?—A. I said policy in the way of the question you asked me. If you ask were price changes discussed, nominal price changes, I do not think that would come up. That would not

come up any more than we discussed whatever we were there for as wholesale executives—anything pertaining to prices.

Q. You testified this morning, I believe, that you recall no meeting with Mr. Wahlgren at the Old Colony Club in Chicago in 1924?—A. Right.

Q. But you said, and you correct me if I am wrong, because I have not the minutes here——

Mr. GLICKFELD. We have them here now.

Mr. ISSEKS. I am sorry.

The WITNESS. Read it.

Q. I cannot put my hands on it, but you correct me if
986 I am wrong, and your counsel I am sure will correct me; I think you testified this morning that some time after 1925 you met Mr. Wahlgren at the Old Colony Club in Chicago?—A. I think so.

Q. Can you fix the date?—A. No.

Q. In the year 1925?—A. I am not sure of that.

Q. In the year 1926?—A. I could not do that. I can tell you the place. We would eat at the Hamilton Club or the Old Colony Club or one of the hotels.

Q. Where is the Hamilton Club, in Chicago?—A. Yes; or one of the hotels.

Q. There is not any doubt during the years 1925 and 1926 you saw a lot of Messrs. Wahlgren and Hubbell?—A. Yes, sir.

Q. And my associate just reminds me you testified in answer to a question of mine you saw a lot of Wahlgren in the fall of 1924 after you said——

The COURT. A few minutes ago.

A. Well, I said——

Q. Didn't you?—A. Yes. As I came in and out of Omaha in doing missionary work on his trade.

Q. Now, you testified this morning, I believe, that your salesmen were not hired to investigate. I think the question was, "Were they hired to investigate?"—A. Yes.

987 Q. And you said "No"?—A. No.

Q. Isn't it a fact that you received "call" reports in connection with the visits to the retail licensees?—A. Yes, sir.

Q. Now you were not selling in the sense of making direct sales to retailers?—A. No.

Q. The wholesalers were doing that?—A. They were doing the billing.

Q. And you were doing the promotion work?—A. Yes.

Q. Your men did not go in and take an order?—A. Oh, yes.

Q. They did, did they?—A. Yes, sir.

Q. For the wholesaler?—A. Yes.

Q. But they also, as part of their duties, were making reports on whether or not the retailer was maintaining the license plan?—A. Their function is to report on anything of interest and importance to the company on all calls they make during the day.

Q. Wasn't it part of their job to see whether the licensee was living up to the ethics of the system?—A. No. Only if they heard of flagrant cases and they would report on it; if they heard of something that was wrong. Their job was to sell lenses.

988 Q. Now here is one. Government's Exhibit 72, a report of "FB." Do you know who he is?—A. Yes; Fred Bernard.

Q. The man with the change of name?—A. The man who dropped the Scheinbloom a few years ago.

Q. He reports in here as to Egolf: "Now: Egolf & Weber cut-rate advertisers—not our type of account. Remove from list—O. K. with Hymie."—A. I think you asked that and I think we translated that into McIntyre, Magee & Brown and you and I were happy.

Q. This looks like "Hymie."—A. No. I do not know. It may be an abbreviation of McIntyre, Magee & Brown.

Q. I will take it McIntyre, which is better for you.—A. I don't know what it is. You read it. I cannot make it out.

Q. It is either "Hymie" or "McIntyre," and you have no "Hymie"?—A. We have no Hymie.

Q. And then there is a notation here "RGL is this O. K.?" and that has whose initials?—A. I wish some people would write better. I cannot make it out.

Q. That is one case. Here is another one, Government's Exhibit 78. This is the same gentleman, "FB." Again he writes: "This is not the Soft-Lite type of account. Hymie tells me they were removed from Loxit list." Is that called McIntyre? I keep reading it Hymie.—A. I see Hymie written in there.

989 Q. Maybe Hymie is supposed to be a trade word for McIntyre?—A. It may be that, or it may be for Cohen. I do not know which.

Q. I think he says "Hymie tells me they were removed from Loxit list." Then he says "McIntyre don't sell the protected product" and he puts "Remove from list" and he is a salesman, isn't he?—A. I do not get the connection there.

Q. Neither do I, but he tells it there, and that is his job; to go around and sell and promote?—A. His job is to sell and promote and to report on what he learns that is of interest to us.

Q. There is a reference in Government's Exhibit 84 to "We shall be very glad to cooperate by so doing." Referring to Exhibit 83 and 82. "However, since Fred Slosson will be in Maine next

week, I am referring the matter to him so that we can cancel the licenses on the basis of his recommendations as our representative. This keeps Colonial out of the picture although I don't know whether in this particular case this is important."—A. Yes.

Q. Mr. Slosson's part of his job was to cover up for Colonial?—A. No. Do you know how that comes about?

Q. Well, I will take your answer.—A. Wholesalers are after volume like most of us. Our type of wholesalers prefer get-
990 ting volume. They take on accounts, especially the larger wholesalers who open up branches and go into new territory, take on accounts that they do not know an awful lot about and try to get their business. Sometimes the account is a good account from a general merchandising standpoint, and then they take on a license of some kind on something they think they will sell, and they don't, and we say that we are spending our money on advertising to John Jones in your territory and we get nothing out of him, and he says "I am not going to take the responsibility for telling him that he is not to have your lenses. Why don't you do it?" And we will do it for any of the wholesalers.

Q. But in this particular case, in Government's Exhibit 82, Mr. Leitch—is that right?—A. Leitch.

Q. He wrote in and said that David Diamon has been doing something. He says, "We have been suspicious of his actions lately, and confidentially we learn through his shopman, a former employee of ours, that he has been supplying Day's Jewelry, a chain outfit through the State of Maine, as well as others with protected products. In other words, doing a little wholesale work in his shop. We are, therefore, recommending that he be taken from the Loxit, Soft-Lite, and Panoptik list."

And then your associate, Mr. Landis, says, "We shall be
991 very glad to cooperate by so doing." Take him off. And then, in substance, since Slosson is up there anyway, let him do the dirty work.—A. I would not say the "dirty work." I will tell him about it, it means.

Q. That is part of the salesman's job?—A. No.

Q. He did it then?—A. Yes.

Q. Now here is a "call" report, Government's Exhibit 87; as to the man who changed his name.—A. That is with the name attached.

Q. I beg your pardon. I assure you I did not mean anything improper about the man changing his name. It says here, "O. K." with "JHV" and that is Mr. Vernon?—A. Yes, sir.

Q. And the next is meant for McIntyre, Magee?—A. McIntyre-Magee.

Q. No dispute about that?—A. No.

Q. The same gentleman, as part of his duties, was going around making "call" reports on operations of licensees?—A. It is a function of our men to report about anything they learn about a user of Soft-Lite lenses.

Q. And he often goes to doctors, and all he does is take orders from customers in effect, and from other retailers?—A. I do not get you. Doctors do not get orders from their customers.

Q. A prescription licensee who is a doctor.—A. Medical?

Q. Aren't they all dispensers?—A. No.

992 Q. I am speaking of a man who is a prescription licensee and who has a retail store. Generally all he does is furnish glasses to the public, does he not?—A. Yes.

Q. And to doctors who send prescriptions in?—A. You are using the word "prescription" in two ways. A prescription optician is one who dispenses glasses to the public on oculists' prescriptions, and a prescription licensee may be a prescription optician or a refractionist.

Q. This again was a part of Mr. Bernard's duties, because Exhibit 93—was it not—the one who made this call report as to Willis B. Blee, of Brooklyn: "On Allan Immig's request I called on Dr. Blee to ask him why he took Soft-Lites off a patient. Dr. Blee doesn't believe in any tinted lenses except in rare cases. Never used any Soft-Lites, and never asked to be put on the list. Will use Soft-Lites only if we can produce an instrument which will definitely show the need and benefit derived from S. L. I recommend cancellation without any publicity. I already told him there was no need to carry him on our list." And then he recommends that he be taken off the list. Is that part of his duties too [handing exhibit]?—A. I am not sure that Dr. Blee is an optometrist or an optician.

Q. He had a license?—A. Yes; and it should never have

993 given to him because it was costly to us to have that fellow on our list. The salesman saved us good money for sending him stuff and material.

Q. But it is part of his job to go around and investigate?—A. It is part of his job to sell. We have no method of checking that sort of stuff.

Q. Was this going around and selling——A. Selling our product.

Q. Going from one licensee to another, wasn't he?—A. I think they spent a lot of time with prospects, trying to get them to use our lenses.

Q. Yes. This gentleman here who I cannot figure out——A. Under "Hymie"?

Q. No; these initials; I cannot figure; it looks like "E. Gavee."—A. That looks like Elmer Robinson.

Q. The gentleman in charge of publicity later on?—A. At one time.

Q. He reports on a man up at New Haven and suggests that it be cancelled because "the man is sixty years old with moss all over him." That is part of his job?—A. To gauge ages? I do not think so.

Q. I do not know. I did not write this.—A. I tell you, I think that is quite an evidence that he has a good sense of humor.

Q. This is supposed to be humorous?—A. Yes.

994 Q. I see.—A. I am not responsible for that brand of *humor*.

Q. I know, but you do not disclaim any responsibility for the action taken. Did you ask this gentleman whether he wanted to be taken off the list?—A. Because of age?

Q. Yes.—A. No, sir. That was not a reason. That fellow was not a user of our lenses. Isn't that an excellent reason for not doing business with him?

Q. I do not find any other records on that.—A. You have only records that we did not do business with. Get the other records and you will find they like it and do business with us.

Q. But you did not have a picture taken of it, did you?—A. Of the moss; no.

Q. No; in the case of "ETS." Who is that gentleman?—A. Ed Summers.

Q. He makes a report that we have not got because the records are not in existence prior to January 1939, and because of his report of 10/8/38, his report was the reason for cancellation, "Cancelled. Recommended by E. T. S." and the date is 10/8/38, and the reason "Price ads, etc."—A. Price advertising.

Mr. SEYMOUR. Your Honor, it seems to me this seems to me this is an awful waste of time. Counsel is taking things already

995 in evidence and reading them into the record.

The COURT. He is trying to impeach the witness's testimony on the absence of policing.

Mr. SEYMOUR. Why doesn't he show the witness the exhibits instead of reading them into the record?

The COURT. It is in the record whether in the exhibit or in the minutes.

Mr. ISSEKS. I am not trying to run any excuse up for these gentlemen, I assure your Honor.

Q. Isn't it a fact, Mr. Singer, that it was part of the salesman's duty to find out whether or not the retail licensees were following the plan or policy which you gentlemen started out with, let us say in 1933.—A. I should not say so, unless it meant the man was not a good customer. That is all. I mean his function—if you know how we crowd them for business—his function was to sell the use

of our lenses. He has fifteen or twenty, approximately, proportional pieces to dispose of. If he finds the man does not use any of our lenses and does not use any promotional pieces and the fellow was a "no good guy" he would put in the report that the fellow was a "no good guy." They talk about the fact that the fellow is not for us and we take them off.

Q. Wasn't it part of their job to maintain the plan, policy,
996 or system?—A. That was not the function of the system.

Q. See if I cannot help you. Government's Exhibit 105: that came from Mr. Vernon to you and Mr. Landis, and he talks about advertising first [handing exhibit].—A. Suppose I read it. We will save the record a buck.

Q. Read the last paragraph about Mayflower Optical Company; that a part of Mr. Vernon's function was to maintain the system or plan or policy—take any word you want of the three words, or name your own word.—A. No. That was not part of his job. Those men are salesmen. They will report on any condition they will find adverse to our interests.

Q. He says "The removal of the Mayflower Optical Company from our stock list (assuming that my strong recommendation that they be immediately reinstated be favorably acted upon) has worked to the desired end that they (Mayflower) will now do all they can to further the acceptance and prestige of Soft-Lite in minds of the Washington oculists." Wasn't that part of his job?—A. I would not say that. The Mayflower man was here and he heard the story and he judged it from what is in the evidence.

Q. You do not dispute the Mayflower man's story?—A. I am not familiar with that.

Q. Mr. George Ramaker went to the trouble in one case of
997 spelling it out for you after you got a letter from Dr. Barnes, Government's Exhibit 154, and Mr. Ramaker says "When I entered his office, he was busy refracting, but he came out and I gave him my card, stating since he was busy he probably would not have time to see me. He wanted to know what I wanted. I asked him how much Soft-Lite lenses sold for in Dunkirk." Was that part of his job?—A. To ask a question like that?

Q. Yes, sir.—A. That was one of the things he might do. And is that the fellow that socked him in the cheek?

Q. That is the fellow that had the fracas, if I may say so. You heard about this before.—A. Well, I did not know the name. He asked the retailer at what price Soft-Lite sold for.

Q. Yes.—A. Why, sure. I would ask that too.

Q. That was part of the system, plan, or policy?—A. No. There was no system, plan, or policy. It is part of his job.

Q. To have that program——A. What program? We had no definite program.

Q. Was it part of his job——A. Not as such; to take orders; to ask whether or not the fellow was finding Soft-Lites profitable, or ask whether or not——

Mr. LEHRICH. If your Honor please, I object to this line of examination as being purely argumentative and not proper
998 cross-examination. This witness was asked as to activities of salesmen on checking, and questions were confined to whether that was a substantial part of their duties.

The COURT. I think we are nearly through with this line.

Mr. ISSEKS. I am through with this last question, your Honor, and then I am going to another subject matter.

Q. Isn't it a fact that in this case Mr. Ramaker is reporting what happened because Dr. Barnes threatened some kind of action. He said, "I asked him how much Soft-Lite lenses sold for in Dunkirk." And that was what he wanted to know. Was that part of his job?—A. Like a dozen other things that he did; a very minor part of his job, if anything.

Q. He does not say a word in there about that. "I asked him how much Soft-Lite lenses sold for in Dunkirk," and——A. I did not read the whole letter.

The COURT. You have made your point. I think you can proceed.

Q. Now you were asked some questions this morning about Defendants' Exhibit's X, Y, and Z, and Exhibit Z is a letter from Mr. Landis to Mr. Ben Remaker of Bausch & Lomb, dated December 5, 1938, with a copy to you, and you said you were
999 familiar with it this morning. Do you remember it? Particularly your counsel directed you to the last paragraph and you said you were familiar and gave an answer.—A. I was familiar with that situation.

Q. Now in that letter which Mr. Landis writes, he says, "It is needless to say that we are conducting an investigation so far as the sale of our product is concerned."—A. Yes.

Q. Did you get a report upon it as a result of that investigation?—A. No. Do you know what that meant?

Q. What was the investigation?—A. Ray Landis probably went down and talked to the North Star, trying to find out whether we were getting enough business on the activity he is putting on it in the advertising, or any complaints affecting our product. We said "That is all right. He is a good customer for us even though Bausch & Lomb or somebody else don't care to do business with him."

Q. Oh, no. Mr. Landis said "We are familiar with the circumstances and appreciate your keeping us advised." What were the circumstances?—A. I would not know.

Q. You said you were familiar.—A. There is a difference between being familiar and knowing every detail. I knew Bausch & Lomb were no longer selling them.

Q. It was not because of value?—A. I did not know their business.

1000 Q. Don't you know they were taken off because they were price-cutting?—A. I did not know that; no. Frankly, Bausch & Lomb did not tell us why they do business with a man or not, as a rule.

Q. But your associate says "We are familiar with the circumstances and we are going to investigate."—A. Yes. What are the circumstances?

Q. Yes.—A. We do not know except they were the type of wholesaler that Bausch & Lomb did not want to sell.

Q. And you want to make an investigation of your product?—A. I did not. Mr. Landis did. When you say investigation, that is a nice word in usage. I say it looks very well on paper. I do not know how far that went.

Q. The words he used "conduct"——A. I know the words. He himself would go down and talk to the guy. We have no way of looking into those things. They come up so rarely. One of us would go and talk to him. All I know is we found him satisfactory.

Q. This morning you were shown a letter from Mr. Eisenhart to you dated 8/20/36, about this Ray-Ban.—A. Yes.

Q. Did you reply to Mr. Eisenhart?—A. I think his answer precluded any reply. We got a good turn-down.

1001 Q. My question was whether you replied?—A. I think not.

Mr. Isseks. If there is a reply, we would like to have it. Both defendants can produce it. Now there was a statement made by the witness this morning, and I wish I could find it in here, about the volume of Ray-Bans sold since 1936. I call on Bausch & Lomb to produce records showing total volume of Ray-Bans sold from 1936 to 1940 and indicate how much went to the affiliates.

The Court. Just a moment. What is the relevance of that precise detail? Do you want to know to what extent Ray-Ban was produced?

Mr. Isseks. That is right.

The Court. Why is it not sufficient if you have information as to the aggregate volume by years?

Mr. Isseks. That would be good enough for me.

The Court. I do not see that you need to have the details.

Mr. Isseks. I withdraw that statement.

Mr. Seymour. We can supply that.

The COURT. Ray-Bans by the year.

Mr. ISSEKS. That is what I had in mind.

Q. You were also shown this morning Government's Exhibits 28 to 31 with regard to the exchange of lists between your company and Bausch & Lomb wholesalers' lists. Do you remember that?—A. Yes.

1002

Q. And you told your counsel that the lists were all in a printed book; anybody could get them. Do you remember you said that, and the book was put in evidence.

Mr. LEHRICH. I object to that. The witness said our lists were published every year. That is all he said.

The WITNESS. I said our lists were published in the advertisements and also in the trade journals from time to time.

Q. Why did you tell him that instead of giving a list? Why didn't you say, "Just look in the book"?—A. When you are in business you don't tell him to do something quite obvious when he is a friend of yours. You say, "Sure, here it is."

Q. And he had four letters on it?—A. Well, that may be.

Mr. ISSEKS. I have been trying since the beginning of this trial, and for some time prior thereto, to get the letter which is referred to in the first line of Government's Exhibit 2. That is a letter from Mr. Hammele to Mr. Singer and he starts it by saying, "I duly received your letter of the 24th instant," and if counsel can look up that letter I would like to have it.

1003

I have no further questions to ask the witness.

The COURT. Is there any redirect-cross?

Mr. SEYMOUR. I have a couple of questions.

Recross-examination by Mr. SEYMOUR:

Q. Referring to the Riggs meetings that you went to, the Riggs salesmen, Mr. Singer, or the sellers of their products, did they appear at those meetings from time to time?—A. Oh, yes.

Q. Mr. Isseks asked you about the discussion on the subject of price with Mr. Hubbell and Mr. Wahlgren. Did you discuss price, that is, the price at which the wholesalers could get your product from you from time to time with independent wholesalers?—A. The same conversation.

Q. When you were about to make a price change did you discuss that generally with your customers?—A. Yes, sir. We told them what we had in mind in order to get their reactions.

Q. It was after that that you reached a final decision as to your price?—A. Yes, sir.

Mr. SEYMOUR. That is all.

Mr. ISSEKS. No further questions.

Mr. ISSEKS. The Government calls Mr. Sterling.

1004 SCOTT STERLING, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. ISEEKS:

Q. Mr. Sterling, where are you employed, sir?—A. Bausch & Lomb Optical Company, Rochester, New York.

Q. How long have you been employed there?—A. Over twenty years.

Q. What is the nature of your duties there for the last five years?—A. Manager of the Lens Sales Division under Mr. Ben Ramaker.

Q. Mr. Ramaker is the General Sales Manager?—A. Mr. Ramaker is Sales Manager of the entire Opthalmic Division.

Q. And you work directly under him in connection with lenses?—A. Correct.

Q. Who has a comparable position at Bausch & Lomb working under Mr. Ramaker in connection with frames?—A. Mr. Ray Anderson.

Q. Are you familiar generally with the lens sales policy of Bausch & Lomb for the past, let us say, ten years?—A. I am.

Q. And you are familiar, are you not, with the fact during that ten-year period Bausch & Lomb were manufacturing cer-
1005 tain tinted lenses for the Soft-Lite Lens Company or its predecessor?—A. I was.

Q. And were you consulted from time to time in connection with the policy of your company in relation to Soft-Lite lenses?—A. Yes, sir.

Q. And you had various discussions with Mr. Ramaker about that, didn't you?—A. Yes.

Q. And you also discussed from time to time, did you not, the policy of the Soft-Lite Lens Company in the distribution of lenses by it?—A. Yes.

Q. And you saw Mr. Singer from time to time during this ten-year period, did you not?—A. Yes.

Q. And you saw Mr. Landis, too?—A. Correct.

Q. You knew generally, did you not, how the Soft-Lite Lens Company was marketing or distributing its product?—A. Yes.

Q. You knew the various gradations, differences in prices, of the Soft-Lite product from retailer to the public and from wholesaler to retailer, and from Soft-Lite Lens Company to wholesaler, did you not?—A. I knew the prices from Bausch & Lomb to Soft-Lite and from time to time I saw the prices from Soft-Lite to distributors, and prices from distributors to retailers. I had no

knowledge of the point you mentioned first—prices from retailers to the public.

Q. Didn't you know as a fact in 1935 the general
1006 mark-up from the retailer to the public on Soft-Lite lenses?—A. Prior to 1935?

Q. In 1935.—A. Yes.

Q. And how did you get that information?—A. It is traditional in the optical business.

The COURT. You mean the amount of the mark-up was traditional?

The WITNESS. The amount of the mark-up is traditional; the fact of mark-up is likewise traditional.

Q. Didn't you know as a fact that the retailers in connection with Soft-Lite lenses had a substantially higher mark-up in 1935 of Soft-Lite lenses than in the ordinary lenses?

Mr. LEHRICH. I object to the question as it assumes a state of facts not in evidence.

Mr. ISSEKS. I thought he answered yes.

The COURT. He answered that he knew the mark-up and that the mark-up was traditional and he is now trying to develop a little further detail.

A. The question implies that there was a substantially higher mark-up on Soft-Lites.

The COURT. He is asking whether that is so, and since he is a hostile witness, as I assume, I will let him lead.

1007 Mr. LEHRICH. He asked him whether he knew that the mark-up was in existence and that it was higher. It is assuming it was higher.

Mr. ISSEKS. Very well. I will reframe it.

Q. Isn't it a fact that the mark-up on Soft-Lite lenses from retailers to the public was higher in 1935 than in connection with white lenses from the retailer to the public?—A. I have to ask you to repeat that. I do not know.

Q. (Question read.)

The COURT. You did not understand his previous answer. He understood there was a mark-up above white.

The WITNESS. I mean there is a differential between white and colored.

Mr. ISSEKS. I withdraw the question. Thank you, Mr. Sterling. You do not have to worry about the question now. I misunderstood your answer. I did not mean "differential." I meant they charged more than they paid, but the witness really anticipated my question.

Q. You knew in 1935, did you not, that Soft-Lite Lens sold at a higher price to the public than ordinary white lens?

The COURT. He has already said that.

The WITNESS. Yes.

1008 Mr. SEYMOUR. If your Honor please, I submit these questions about the witness's knowledge are wholly immaterial. General knowledge of an employe of one of the defendants here without being tied into some discussion or something like that is wholly immaterial.

The COURT. Obviously the knowledge in itself does not prove anything until he lays the foundation of a knowledge of some policy which I assume he is coming to.

Mr. ISSEKS. That is right.

Q. In 1935 wasn't your Bausch & Lomb Optical Company worried about the Soft-Lite situation because of the fact that there was a substantial differential in price between Soft-Lite lenses and white lenses?

Mr. SEYMOUR. I object to their being worried.

The COURT. Yes. The question is pretty vague and normally I would not allow it, but you have a very intelligent witness on the stand and I think he can handle himself.

Mr. SEYMOUR. It is not a question of not handling himself, but I think the question is improper.

Mr. ISSEKS. I will withdraw the question. I now offer in evidence a memorandum written by the witness, dated August 15, 1935, addressed to Mr. Ramaker, and before your Honor

1010 rules on this I will ask him whether he has his signature on the photostat. I ask whether it is your signature, that is all.

The WITNESS. Yes.

Mr. ISSEKS. And you wrote that in the regular course of business, did you not, sir?

The WITNESS. Yes.

Mr. ISSEKS. I offer it in evidence.

Mr. SEYMOUR. I would like to examine the witness on the voir dire about this document before I state my objection.

The COURT. Very well.

By Mr. SEYMOUR:

Q. Mr. Sterling, did you prepare this memorandum?—A. Yes.

Q. Did you deliver it to Mr. Ramaker?—A. I don't remember.

Q. Did it go to anyone outside of the Bausch & Lomb executive group?—A. I do not know. I think not.

Q. Did the subject matter discussed in this memorandum ever come to anything?—A. No.

Q. So far as you know was any copy of this ever furnished to anybody connected with the Soft-Lite Company?—A. I do

not know; so far as I know, no copy ever was. It was confidential.

1011 Mr. SEYMOUR. I object to it, if your Honor please. This is a memorandum, an intra Bausch & Lomb memorandum, which deals with certainly speculative, hypothetical considerations which might have led Bausch & Lomb to consider a proposition if it arose. It did not go outside of the organization, and it was prepared only for their own use and is immaterial and irrelevant to the charges of conspiracy, and I object to it.

The COURT. The fact that it is intra-organization is not sufficient to exclude it. On the question of relevance I will be glad to read it.

I will overrule your objection.

Mr. SEYMOUR. Exception.

(Marked "Government's Exhibit 202.")

By Mr. ISSEKS:

Q. I show you Government's Exhibit 202, the copy, and direct your attention to the paragraph beginning on the bottom of page 2, beginning "the economic justification," and I ask you whether the paragraph sets forth your understanding in 1935 of the Soft-Lite price distribution system?

Mr. SEYMOUR. If your Honor please, I think that question is too vague. The price distribution system?

The COURT. Why don't you call his attention to the paragraph and ask him if he still subscribes to the contents, whatever it is?

1012 Mr. ISSEKS. All right.

Q. Will you look at the paragraph? Have you read it, sir?—A. Yes; I read it.

Q. At that time that was your understanding of the manner in which Soft-Lite did business?—A. The justification for the existence of Soft-Lite in the picture.

Q. Now then, you go on to say "as always has been with them they start with high retail prices?—A. That is what it says.

Q. That was your understanding at the time?—A. Our retail price is not of their making.

Q. You did not put that in there "not of their making?—A. That is correct; I did not.

Q. You say, "As has always been, they stast with high retail prices, and from this they develop a price schedule." A. Yes. "From this they develop a price schedule."

Q. And in the second case it was of their making?—A. Certainly it is of their making.

Q. And you did not put in the first case "not of their making"?—A. That is right. Your question to me, if I understand correctly,

is in 1935 did I subscribe to the contents of that paragraph?

Q. Yes, sir.—A. And with the amendment that they start
1013 with high retail prices which they did not create—those do represent my views at that time and since that time.

Q. Did you ever put in writing any place the words "not of their making?"—A. No.

Q. Ordinarily when you set forth a statement of facts as you understand it, you put all the facts you understood in writing, do you not?

Mr. LEHRICH. There is no evidence that this is a statement of fact.

The COURT. He is just arguing with the witness. That is the reason I will let him go on, but not too far.

(Question read.)

A. I cannot answer yes to that. Not ordinarily.

The COURT. Your answer is, on the record, you have never——

Mr. ISSEKS. I will take your answer.

Q. Now take the second sentence, "If the retailers are not able to obtain the high prices listed"; you said that, didn't you?—A. Yes.

Q. And you meant price to the retailer, didn't you? You mean a price the retailer then was paying?

The COURT. He is talking about prices to the consumer.

Mr. ISSEKS. That is right. He once made a statement. I don't know what he is going to say now.

1014 The COURT. You ask him whether it meant price to the retailer.

Mr. ISSEKS. No; I said prices.

The WITNESS. "Are not able to obtain the high prices listed." I said that.

Q. From the retailer to the consumer?—A. To the consumer.

Q. It should read "If the retailers are not able to obtain from the consumer"; is that right?

Mr. SEYMOUR. We can agree on amendments on both sides here if you want to. I will be willing to stipulate that amendment.

Mr. ISSEKS. No. I won't stipulate the first under any circumstances.

The COURT. It is pretty obvious it meant prices to consumers; isn't that so?

The WITNESS. Prices from retailers to consumers.

Q. And you still say there might have been an amendment for retail prices which you considered before?—A. Yes.

Q. I see. In other words, high prices listed are high prices listed by the retailer, as you now read it?—A. No. If the retailers are not able to obtain the high prices listed—I answered I wrote that.

Q. Who listed the high prices, as you understood at that time?—A. I have no knowledge of any high prices
1015 listed than perhaps the initials.

Q. But you wrote it?—A. Yes; I wrote it.

Q. You said if the retailers are not able to obtain the high prices listed. In other words, there were high prices listed from the retailer to the consumer, were there not, at the time when you wrote the memorandum?—A. That reference is not to any high prices listed that I know about. I am not aware of any high prices listed either by Soft-Lite or retailers.

1016 Q. Was it something that you made up?—A. Is it something I made up?

Q. Yes.—A. Perhaps careless wording.

Q. I see. You were in the habit of making careless statements in a memorandum to your superior, were you?—A. I cannot answer that yes.

Q. In 1937 was Bausch & Lomb Optical Company in the business of placing orders for Soft-Lite Panoptik lenses?

The COURT. Do you mean purchasing?

Mr. ISSEKS. No.

The COURT. What do you mean by "placing orders"? I do not follow you.

Mr. ISSEKS. Taking orders from somebody else.

A. For Panoptik?

Q. Soft-Lite Panoptik.—A. Prescriptions?

Q. No; stock, to the Government of the United States.

Mr. SEYMOUR. Wait and let us have the question.—A. I would like to have that question repeated.

Q. I will rephrase the question. There is a gentleman connected with your organization by the name of Mason—M-a-s-o-n?—A. No; not that I know of.

Q. Any man by the name of Mason connected with any affiliate in 1937?—A. Yes.

Q. What affiliate?—A. San Antonio branch of Riggs Optical Company.

1017 Q. What was the one in which the affiliates did business with your company?

Mr. SEYMOUR. I object to that as immaterial. It is such a general question, and it does not relate to any issue in this case.

The COURT. Will you frame your question so it will be more specific.

Q. You had six different affiliates, did you not, in 1939—in 1937 and the present time?—A. Yes.

Q. They act as wholesale distributors of your goods, do they not?—A. Yes; correct.

Q. They also act as representatives of your company for the purpose of passing on opthalmic goods sold to other distributors, do they not?

Mr. SEYMOUR. I object to that.

The COURT. I will overrule your objection.

Q. If you do not understand the question, I will put it a little differently.—A. Yes.

Q. Suppose for the sake of argument North Star, mentioned here—give me the name of any one of your independent wholesalers in this area.—A. Friedlander.

Q. Suppose Friedlander wants to buy opthalmic goods from your company at wholesale prices. Does he place the order with you at Rochester, or does he place it through Colonial?—A. I think that is his option.

1018 Q. He can do either one?—A. Yes.

Q. How do you ship, direct or through Colonial?

Mr. SEYMOUR. Your Honor, this has not anything to do with any issue in the case.

The COURT. Yes; I think he is showing the general mechanics, how this industry is operated.

Mr. SEYMOUR. It is incompetent, irrelevant, and immaterial.

Mr. ISSEKS. We are going to try to prove, your Honor, if it takes days, that Bausch & Lomb controls the affiliates.

Mr. SEYMOUR. If your Honor please, why don't we specify that issue and face it now, and see if it is material.

The COURT. Is that what you are driving at?

Mr. ISSEKS. That is one of the first steps.

Mr. SEYMOUR. Why don't we discuss that a little bit?

Mr. ISSEKS. I will be glad to.

Mr. SEYMOUR. And see if it is material in this case.

The COURT. You want an extended argument?

Mr. SEYMOUR. I do not think it will take much time.

The COURT. All right, I will listen to it now, as well as any other time.

1019 Mr. SEYMOUR. I submit, if your Honor pleases, and I am now assuming that the Government's evidence on conspiracy is substantially before the Court—they have told us that the only other evidence they are going to have is the testimony of Mr. Sterling and Mr. Ramaker, and I know they will produce no evidence of the conspiracy—the question of the relationship with the affiliates, the question of control of affiliates, is not in this case. First the affiliates are not parties. There is no reason why they should not have been made parties. The Government has made them parties in another case in this court. It is not alleged that the defendants made this conspiracy through the affiliates or entered into it through the affiliates. It is not alleged that the con-

spiracy was accomplished through the affiliates, except perhaps for one allegation, and that is the one with respect to the prevailing local price.

There has been no evidence of any conspiracy with respect to the way the affiliates should operate. Therefore the whole predicate of any evidence about what the affiliates did, or their relationship to Bausch & Lomb, is lacking from this case. You remember Mr. Wahlgren—of doubtful credibility, I maintain—who was brought here as the Government's sole witness, I maintain, on the question of alleged conspiracy, explicitly said retail prices were never discussed. Therefore there is no evidence in this case
1020 that as a part of the conspiracy there was any problem of maintaining local retail price.

It is true the Government has offered a great deal of evidence on that question. It may be admissible against Soft-Lite. It may be available on some claim as to the distribution system against Soft-Lite, but none of it is admissible against Bausch & Lomb. The retail price phase of it is squarely, by Mr. Wahlgren's own testimony, out of this case. Therefore I say no evidence about control of the affiliates could be admitted.

I urge this further consideration. If I am right we ought not to embark upon that question because the Government's predicate for going into it is out. It is not pleaded, it is not proved, that any facts could make that issue material. Then there is another reason why we ought not to go into it even for the purpose of connection, or even on the theory the record may show something later. That reason is that the Government now has another case pending in which the affiliates are named as defendants, which involves the question of relationship. We are going to try that case before Judge Woolsey November 5th, and I do not think this case ought to be used as a curtain-raiser for it by indirection.

My personal opinion is that the real reason for going into
1021 this at this time is just to see how the evidence will go, for that case.

Mr. Isseks. Your Honor, that is an unwarranted statement, and counsel knows better than to make such a statement.

The Court. There is no occasion to get excited.

Mr. Isseks. But he knows better. It suggests we are doing something unprofessional.

Mr. Seymour. Your Honor, I am implying no impropriety. I say on the issues in this case it is not material, and that circumstance that we have got to try the issue in another case on a broad question makes it particularly inappropriate that we should have to deal with it here.

The Court. As far as that last argument is concerned, if it is within the issues of this complaint the fact that it may overlap

another complaint is not something that I can take any notice of. As far as I am concerned I have no knowledge that another case will be tried, and I have to be guided by the allegations of the complaint in this case and the answers in this case, and the issues that are developed in this case. So I am not concerned with that part of your argument. I am concerned with the earlier part of your argument, and I will be glad to hear Mr. Isseks on that.

1022 Mr. Isseks. Your Honor, the complaint alleges in Paragraph 2 on the question of jurisdiction: "Bausch & Lomb Optical Company have manufactured lenses pursuant to said unlawful contracts, combinations, and conspiracy at its plant in Rochester, New York, and, through its affiliated and controlled wholesale branches, has sold, shipped, and delivered certain of said lenses."

The Interstate commerce is admitted, your Honor. They have denied that it has been done through the control of wholesale branches.

Mr. Seymour. That issue is out of this case. If this is on the issue of interstate commerce we stipulate it.

Mr. Isseks. We then allege, as Mr. Seymour pointed out, in Paragraph 21, the retailer license mentioned in Paragraph 20 provides: "that the retailer shall sell Soft-Lite lenses at the 'price prevailing in the locality.' In each locality in which there is a wholesale outlet controlled by or affiliated with Bausch & Lomb the 'prices prevailing in the locality' to which the retailer is required by his license to conform is a price set by the wholesale outlet affiliated with or controlled by Bausch & Lomb. In localities in which there is no wholesale outlet affiliated with

1023 or controlled by Bausch & Lomb, the 'price prevailing locally' to which the retailer is required to conform by his price is set by some other retailer or group of retailers."

Your Honor, in addition to those allegations I think it is well settled, particularly in a case charging violation of a Federal statute—I think that case comes under the Elkins Act and other statutes—that you can show that action is done through a controlled entity. It is our position here that these six affiliates are controlled just as if they were wholly-owned subsidiaries. In fact we are going to offer proof that Bausch & Lomb considered them subsidiaries, in their annual statements. We will offer proof that a Federal Trade Commission found they were controlled. We claim that all of the acts of all the executives of the affiliates, including the letter Mr. Wetmore writes about prices, are all acts of Bausch & Lomb.

The Court. Of course that gets us to the question of conspiracy and the question of its extension to Bausch & Lomb. But we are not concerned here with that particular issue. Here we are con-

cerned with the question of admissibility. I have already ruled I will admit practices of the wholesalers as evidence of the system of distribution, regardless of whether it was an affiliated wholesaler or an unaffiliated wholesaler. Therefore you do not
1024 need at this point to get into the issue of control at all. I would like to know what has happened to the requested stipulation about stock ownership.

Mr. Isseks. That I understand counsel is going to give us, but we have not seen it yet.

Mr. Seymour. I said to your Honor the other day when the question arose, and after your Honor heard argument on the question of irrelevancy and ruled subject to my reservation, that I am willing to stipulate it.

Mr. Isseks. If we can get it in the record it is all right with me.

Mr. Seymour. It seems to me that we ought to be relieved of some of the burden of this case if we make the stipulation. I do not want to try out the issue of control if it could not be relevant.

The Court. My present disposition is that I will admit in evidence, subject to Mr. Seymour's reservation, whatever that may be worth at the proper time—I have indicated to me it seems not worth much, but I do not want to pass on it at this time—actions on the part of affiliated wholesalers and actions on the part of unaffiliated wholesalers, because they are at least evidence of the system of distribution. Now whether that action constitutes the action of Bausch & Lomb is the secondary question.

1025 Mr. Isseks. It is on the secondary question, your Honor, we offer some of this.

The Court. Does your examination go into that?

Mr. Isseks. I intend to examine the witness with regard to the method by which Bausch & Lomb does business, and I do not intend to take much time with Mr. Sterling but do intend to take some time with Mr. Ramaker, because he is the sales manager.

Mr. Seymour. I have been making this argument on the assumption that we are now passing to the second point.

The Court. Your question is that you want to know how Bausch & Lomb does business?

Mr. Isseks. That is right.

The Court. Do you mean through what system of distribution?

Mr. Isseks. Through its wholesalers, and offered through affiliates.

The Court. Are you dealing with Soft-Lites, or dealing with products generally?

Mr. Isseks. I am dealing with products generally.

The Court. How do you make the general products relevant to this picture?

Mr. ISSEKS. I am not going into the distribution of the products, but I want to show it is done through affiliates. My pur-
1026 pose is to show the affiliates act for Bausch & Lomb for all purposes. I intend to show that they do very little other business; that at one time they did a certain proportion of other business, and that is going down and down and more is done solely by Bausch & Lomb, and Bausch & Lomb makes only rarely a direct distribution to independent wholesalers but an independent gets in touch with Colonial and orders his product at the price, and they in turn get it from the factory. That is the testimony.

I think we can perhaps shorten the whole thing if counsel wants to make a general objection and we get out a memorandum of what we intend to prove. It is only on the question of relevancy.

Mr. SEYMOUR. I am not going to stipulate control, because I am going to try that issue in another case. Here I maintain, your Honor, the only possible link to look to is the question whether any testimony by Wahlgren—which I maintain should not be accepted at all—ties into this distribution system, and that Mr. Wahlgren expressly testified on questioning by Mr. Isseks that there was never any discussion of retail price, and then the only issue in this complaint which involves the affiliates is plainly out of the conspiracy.

The COURT. He goes beyond that. He says assuming
1027 affiliates are never mentioned, just as he can produce evidence of Mr. Sterling's activities because Sterling is an official of Bausch & Lomb, he can offer evidence of Riggs's activities because Riggs is no more than a department of Bausch & Lomb.

Mr. ISSEKS. That is right.

The COURT. That is the theory on which he is proceeding. Whether I should let him do so is a difficult question. I am not at all disposed to treat it lightly, if I am correct about your theory on which you want to proceed.

Mr. ISSEKS. Yes; you have the theory, but I do not intend to offer the proof for any other purpose than to show control.

The COURT. Is it intended to show activity with respect to Soft-Lite?

Mr. ISSEKS. No, sir.

The COURT. What is the point of showing control per se?

Mr. ISSEKS. Because they dispute it. My position is when Riggs gave instructions down the line as to current prices, that was Bausch & Lomb. I cannot do that unless I show they ran Riggs. I intend, through this witness and Mr. Ramaker, to show they ran Riggs.

The COURT. We get back now to my same proposition.

Mr. ISSEKS. We do.

1028 The COURT. Showing the activity of Bausch & Lomb by showing the activity of its agents, and that they were in effect agents of Bausch & Lomb.

Mr. ISSEKS. Yes; I intend to do it by stock ownership first; second, by reports they prepared from their records; and from the witnesses, as to who the executives are of the company. I may be wrong in my theory.

The COURT. But we cannot pass on that question by having recourse to the allegations of the complaint. Clearly on that theory, assuming that he had never mentioned affiliates in his complaint, he might nevertheless still be privileged to prove it, just as he could prove Sterling was an officer of Bausch & Lomb.

Mr. SEYMOUR. My difficulty is that if counsel will put in the matter of stock ownership by stipulation, and attempt to put in this wholly fantastic—I mean fantastic as a matter of evidence—order of the Federal Trade Commission, issued on consent and on a stipulation, it should not be binding in any other proceeding or evidence at all, and which of course your Honor will exclude—if he offered the annual reports and stood there, then we would not really be getting into a big field.

1029 Mr. ISSEKS. Your Honor, I am not going to offer the stipulation, because it has in it the statement that it cannot be used elsewhere. But I am going to offer the opinion which has no stipulation. This was a semiofficial body recognized by the Supreme Court in connection with another phase of its functions.

The COURT. Is the opinion founded on the stipulation?

Mr. SEYMOUR. Yes.

Mr. ISSEKS. That is true.

The COURT. It takes the facts stated.

Mr. ISSEKS. But it does not take the conclusions. The opinion is what I am offering. It finds as a fact in the opinion that it is controlled.

Mr. SEYMOUR. It is on the consent and the stipulation that the opinion was entered. If we are going to have a ruling only on those simple evidentiary questions, I would be willing to have the question of control in the interest of saving time reserved until the end of the case.

Mr. ISSEKS. I cannot do that.

Mr. SEYMOUR. We contend it is out of the case. Counsel is apparently going to examine now at length. I object to it. I think we are going off into a fruitless venture which by no evidence in the case will be justified.

Mr. Isseks. Will counsel enter into some kind of stipulation as was entered into before the Federal Trade Commission?

1030 The Court. He has said he is not willing to do that.

Mr. Isseks. He might want to do that for his case only.

The Court. Did Mr. Seymour hear your inquiry?

Mr. Isseks. We will not use it in the other case, and could not if we cannot in this case. I will stipulate that we will use it for this case only, and word for word.

Mr. Seymour. It does not seem to be very binding.

Mr. Isseks. I have not offered the stipulation. After Mr. Seymour took it up with me I took that matter up with my associates and we decided we would not offer the stipulation but would offer the opinion.

The Court. It seems to me the opinion would be just as subject to exclusion as the stipulation.

Mr. Seymour. Of course.

The Court. If it is based on the facts in the stipulation.

Mr. Isseks. I do not know what the law is on that.

The Court. The opinion says that the facts are as follows—and the facts are taken from the stipulated set of facts, which stipulation in turn says that it can only be used for the purpose of that case. Then it cannot be admitted in any other case,

1031 otherwise you are simply destroying the effect of the stipulation.

Mr. Isseks. Except that after the statement of the facts it goes on and gives an opinion. It seems to me that the opinion is the judicial reasoning based on the facts. The facts in that case, your Honor, do not conclude that it is controlled. It states the facts.

The Court. The opinion does not give the facts of itself. The only thing that the opinion can be evidence of is the determination.

Mr. Isseks. That is all I am offering it for.

The Court. But if the determination is based on the facts in the stipulation, you are just going in a circle.

Mr. Isseks. They do not come to the conclusion of control, and I am asking if we can have the same stipulation of the facts.

Mr. Seymour. It only goes to stock ownership, your Honor. The stipulation in that case was for the purpose of that case only, not to be used elsewhere—that they had the power to control certain things. That is a conclusion the Court can always draw from stock ownership.

The Court. That is right?

Mr. Seymour. It does not follow at all that they had the control, or that they exercised it. I am willing to stipulate the

1093 stock ownership in the interest of saving time, but I will not stipulate beyond that, because I think beyond that it

would not be fair, in view of my other litigation. If we can save time I will do it.

The COURT. Will that suffice for your purposes, stock control?

Mr. ISSEKS. No; it will not. If they will stipulate the first eleven paragraphs of the stipulation, I am perfectly willing to avoid the necessity of going into this proof, with the same reservation.

The COURT. Mr. Seymour shakes his head, which I suppose means he is not willing to do that.

Mr. ISSEKS. That is all right, I was trying to short-cut it if I could.

Mr. SEYMOUR. I will be very glad to have overnight to think about that, if your Honor pleases. The only provision in the stipulation that has been mentioned to me before is the one mentioned where they had the power to do certain things by reason of the stock ownership.

Mr. ISSEKS. The first seven paragraphs deal with stock ownership. Paragraphs 8, 9, 10, and 11 deal with method of distribution of Bausch & Lomb products through the affiliates and others, and I would like to have those. The rest of them deal with another subject matter which is not germane to this case, a subject matter which was decided there.

1033 The COURT. Let me make a suggestion that you gentlemen take it overnight, and perhaps you will want to confer about it, I do not know. Then counsel alone will meet here tomorrow morning at 10:15 to hear what the disposition is. As far as your witness is concerned you won't need him here until 10:30. Perhaps we can reach some sort of arrangement tomorrow.

Mr. ISSEKS. Your Honor, we have another matter that we want to take up here, too. I think we would rather take it up in chambers. It is on the subject of figures.

The COURT. Very well, then suppose we adjourn now and I will see counsel in chambers.

(Adjourned to Friday, September 26, 1941, at 10:15 a. m.)

1034 UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY, ET AL.

NEW YORK, *September 26, 1941,*
10:30 a. m.

(Trial resumed.)

(Discussion off the record re stipulation.)

(Short recess.)

Mr. SEYMOUR. If your Honor please, we are prepared to enter into a stipulation which contains the paragraphs 1 to 11 under

the stipulation before the Federal Trade Commission, with appropriate protection against the use in any other proceeding of the stipulation or any finding based thereon, but I think as a matter of precaution and protection all around, we had better reduce that to writing, and therefore—I have discussed with Mr. Isseks—we have agreed that we will cast it in written form over the week end.

Mr. ISSEKS. That is all right with me, your Honor.

The COURT. Then it can be put on the record. Subject to objection for relevance and materiality.

Mr. SEYMOUR. Subject, of course, to relevance and materiality.

1035 Mr. ISSEKS. And then we may go right ahead and offer the other formal documents.

Mr. SEYMOUR. And when those particular documents referred to by Mr. Isseks are offered, I want to be heard on objection as to each of them.

Mr. ISSEKS. I assumed that would be so.

The COURT. Do you want to do more than interpose an objection? When you say you want to be heard on the objection, do you mean you want to argue at this time?

Mr. SEYMOUR. I want to present an objection.

Mr. ISSEKS. I would like to first take up the annual report for the year 1937. We have a copy all marked up. One of my associates did that in the usual lawyer's way——

The COURT. You are being given a clean copy.

Mr. ISSEKS. I offer this in evidence as the next Government's Exhibit. It is the annual report for the year 1937 of the defendant Bausch & Lomb, signed by Mr. Edward Bausch as chairman and M. Herbert Eisenhart as president.

Mr. SEYMOUR. I would like to note an objection to the materiality and relevancy. The report contains a consolidated balance sheet, because, as your Honor knows, that is proper accounting practice, but the majority of the stock is owned——

1036 The COURT. I draw no inference from that whatever.

Mr. SEYMOUR. There is also a reference in the body of the report to the fact that the affiliated companies—that Bausch & Lomb owns the controlling stock interest in the affiliated companies. That, too, of course, is a mere compliance with the modern nomenclature made necessary by the SEC Act of 1934 and the regulations thereunder. Now that is the reason we object to its materiality and relevancy. There is nothing else in the report which could by any other possibility be material and relevant to any issues in the case, but I assume that your Honor will receive it subject to a motion to strike out.

The COURT. Correct. I would not want to undertake to give the time to read it now. Have it marked.

(Marked "Government's Exhibit 203.")

Mr. ISSEKS. I would like to call your Honor's attention, not necessarily now, but when your Honor has occasion, to the bottom of page 7, and which we say constitutes an admission at a time when there was no controversy between the Government and the defendant on the question of control.

I now want to offer a statement. I do not want to offer
1037 the registration statement in whole, because it is bulky and would take up too much space; but under "History and Business" there is a statement which——

The COURT. Why don't you have it excised and mark the page?

Mr. SEYMOUR. If your Honor please, I suggest that it be read into the record as an extract from the registration statement filed by Bausch & Lomb with the Securities and Exchange Commission in 1937 in connection with the registration of their stock, but I object to this, too, as irrelevant and immaterial, and I assume your Honor takes it subject to a motion to strike out.

The COURT. Correct.

Mr. ISSEKS. There are only seven lines. I will read it: "For the purpose of safeguarding the channels of distribution of registrant's lenses, mountings, and other ophthalmic products, and in order to assure the same high quality in the finished product which is a standard of the completed work done at the factory, registrant has acquired a controlling interest in six large wholesale optical companies, which maintain 165 branches throughout the United States, and through which products representing over 46 percent of the total annual sales volume of registrant are distributed.
1038 These are:"—and then a mention of the six companies,

Now I would like to offer some answers by the defendant Eisenhart, who is president of Bausch & Lomb at the present time, given by him on October 19, 1931, before the Special Master in the case of Bausch & Lomb Optical Company against Roy M. Wahlgren, et al. At that time Mr. Eisenhart was not the president of the company but he was vice president. I offer one question and answer that appears on page 6365.

The COURT. I take it subject to the same objection.

Mr. SEYMOUR. It is subject to the same objection, if your Honor pleases, with one further reservation, that I have not seen this testimony before.

The COURT. Subject to check always.

Mr. SEYMOUR. I do not know what it is. I saw it this morning for the first time. And I assume if there be explanatory or other matter in the record, that may be offered in connection with these extracts.

The COURT. Of course.

Mr. SEYMOUR. And also in view of the fact that the Master's report in connection with these proceedings has already been adverted to on the examination of Mr. Wahlgren, I assume by making copies of this available to the Government they may be
1039 regarded as appropriate brief material, because I think the fact is this question and answer was addressed not to the question of control but to the question of whether that control was publicly announced. That was an issue in the case introduced by Mr. Wahlgren, as I understand it, because Mr. Wahlgren was saying, "My secret control of some of these companies is no worse than Bausch & Lomb's secret control," and he was trying to develop I think there was some secrecy about the Bausch & Lomb interests in some of these companies. So in the event that in the Master's report there is any light on that, I assume that may be referred to.

Mr. ISSEKS. I have no objection; none whatsoever.

The COURT. Very well.

1040 Mr. ISSEKS. The first question on cross-examination of Mr. Eisenhart and the answer appear on page 6365. I read as follows: "Q. The Bausch & Lomb Company control other companies than the Riggs Optical Company, do they not?—A. Yes, sir."

Then there is another question and objection, and I do not read those. Then there is a question on page 6366, at the bottom of the page: "Q. Was it disclosed to the public or the employees of any other optical companies that Bausch & Lomb controlled, if they did have a control of them?—A. To the employees in official positions in the companies, yes."

Then the question appearing at the bottom of page 6367, which reads: "Q. What company that Bausch & Lomb controlled was it disclosed to the customers and the public that they did so control it?"

There are objections and the Master says he may answer. The answer appears on the top of page 6369: "The WITNESS. I do not know that I can express any specific company where that was actually carried out. Q. Was not the control by Bausch & Lomb of various optical companies which they did control such a
1041 secret?"

There are objections, and a direction to answer. "The Witness: We made no effort to keep it from the public, if that answers the question."

There is nothing else on that, your Honor. Now I would like to offer one document before examining Mr. Sterling, and then I think I will be finished with him. We were furnished by counsel for Bausch & Lomb a list headed "Wholesale Distributors" which we understand to be all the wholesale distributors, and with a

notation made by somebody, either counsel for Bausch & Lomb or a representative of Bausch & Lomb, as to whether any particular person or corporation on the list was an Orthogon, Panoptik, Loxit or Full-Vue wholesale distributor. All I am interested in is a list of the Bausch & Lomb wholesale distributors. If this constitutes that by reading the X's on the left-hand side, I offer it in evidence. If it does not I wish they would furnish us one.

The COURT. This purports to be a list of wholesalers having no connection with Bausch & Lomb?

Mr. ISSEKS. All in the United States.

The COURT. Dealing in optometric goods?

Mr. ISSEKS. Apparently, indicating who the Bausch & Lomb licensees are, in various categories; because they have Orthogon, Panoptik, Loxit and Ful-Vue wholesale distributors.

1042 I do not want to put this document in evidence, and I will take gladly simply a list of their wholesale distributors.

Mr. SEYMOUR. The list was furnished at the request of one of Mr. Isseks' colleagues to show just what it shows.

Mr. ISSEKS. We offer it in evidence.

Mr. SEYMOUR. We usually wish to comply with their requests, even though we consider the matter irrelevant or immaterial to any issue. This list is not material or relevant to any issue. It was furnished in that form because Mr. Isseks asked for it. If he wants a list of the Bausch & Lomb wholesalers we will prepare such a list.

Mr. ISSEKS. I would not offer it unless counsel offered a list of the differences and we ought to have both lists to compare the differences.

Mr. SEYMOUR. We will prepare such a list.

The COURT. Does this list contain wholesalers that do not do any business with Bausch & Lomb?

Mr. ISSEKS. Oh, yes.

The COURT. Or is this a list of Bausch & Lomb wholesalers?

Mr. SEYMOUR. I will inquire. This list I am told contains

1043 information which was furnished at the request of Government counsel, which would not ordinarily appear on any list of wholesalers. I think what we had better do is check this list and see if there are any revisions, and furnish such a list. We do not think it has any bearing on any issue in the case.

Mr. ISSEKS. I am told that the list, except for the indications on the left-hand side, constitutes a list of the wholesalers of Bausch & Lomb. I am perfectly willing right now to get a pair of shears and cut that right off, because my associate wanted it perhaps for another purpose and we can get it again.

Mr SEYMOUR. It does seem kind of wasteful after we have gone to all the trouble of putting those on to exorcise them in that way. We will furnish you a clean list.

The COURT. Counsel is willing to furnish you with a clean list which will be responsive to your needs.

Mr. ISSEKS. Very well, that is satisfactory, and I think we better reserve a number because it will be just a list.

The COURT. You are offering it in evidence?

Mr. ISSEKS. That is right.

The COURT. I assume Mr. Seymour objects to it.

Mr. SEYMOUR. I do object to it as immaterial and irrelevant to any issue in the case.

1044 The COURT. It will be received in the same way, and subject to motion to strike out at the proper time. You may now proceed with your witness, and we will reserve a number for that exhibit. It will be Exhibit 204, list of Bausch & Lomb wholesalers.

Mr. ISSEKS. I asked Mr. Heller to come here for cross-examination. I think in view of the fact he said yesterday he operates by himself, we ought to get finished with him, and then I will go on with Mr. Sterling.

The COURT. I thought he was coming back Monday.

Mr. ISSEKS. You gave him a choice, and he is here today.

Mr. SEYMOUR. If counsel for the Government can stipulate with us the dates of cancellation of his Loxit and Soft-Lite lenses we won't need to examine.

The COURT. That is all you want it for?

Mr. ISSEKS. That is all they want.

Mr. SEYMOUR. And the dates of issuance of the licenses; and also stipulating with us—the fact is that I am not prepared now to indicate the details on it, but will furnish them to Government counsel—the dates of employment of Weinrib by Colonial Optical Company. If that is stipulated we won't ask any questions.

Mr. ISSEKS. I will stipulate anything that is a matter of record any time, anywhere.

1045 Mr. SEYMOUR. I ask counsel to stipulate that the Soft-Lite license to Mr. Heller was issued March 9, 1929, and was cancelled July 30, 1937; that the Loxit license to Mr. Heller issued by Bausch & Lomb was issued October 4, 1934, and was cancelled March 25, 1937; that Mr. Weinrib was employed by Colonial Optical Company from November 1, 1933, to December 14, 1934.

Mr. ISSEKS. I will stipulate whatever the records show.

The COURT. Then you need no examination of Mr. Heller?

Mr. SEYMOUR. That is right.

The COURT. Mr. Heller, you are excused.

Mr. ISSEKS. Yesterday I asked Mr. Singer whether or not there was ever a reply to the letter that Mr. Eisenhart wrote about Ray-Ban. They showed me a letter this morning to Mr. Eisenhart, dated August 24, 1936, which merely acknowledges receipt of the letter and says Mr. Singer is in Europe. I now offer in evidence, your Honor, the letter dated August 13, 1937, written by the witness Mr. Sterling, to Mr. Landis.

Mr. SEYMOUR. I object to it as immaterial and irrelevant.

The COURT. Objection overruled.

1046 (Marked "Government's Exhibit 205.")

SCOTT STERLING resumed the stand.

Direct examination resumed by Mr. ISSEKS:

Q. You met Mr. Singer in connection with your work at Bausch & Lomb, did you not?—A. Yes, sir.

Q. When is the first time you met him? Your best recollection. Not the date but the year, if you can recall. 15 years ago?—A. Yes.

Q. In the early stages of the Soft-Lite contact with your company?—A. I think that is a pretty good guess, 15 years. Maybe '25 or '26.

Q. What were your duties in 1925, and office with the company?—A. I was a subordinate in the advertising or sales promotion department.

Q. And what are your duties at the present time with Bausch & Lomb?—A. I am sales manager of the Lens Division under Mr. Ramaker.

Q. What do those duties consist of in general?—A. All matters pertaining to the sale of our lens products.

Q. Including price?—A. Including price.

Q. Including price at which you sell lenses to whoever you sell them to?—A. Correct.

Q. Have you talked to Mr. Singer from time to time about the price of Soft-Lite lenses of your company to Soft-Lite Company?—A. Frequently.

1047 Q. And have you talked to Mr. Singer from time to time about the price of Soft-Lite lenses from the Soft-Lite Company to the distributors?—A. Yes.

Q. And have you talked to Mr. Singer from time to time about the price of Soft-Lite lenses from the wholesalers of Soft-Lite to the retailers of Soft-Lite?—A. Yes.

Q. And those price discussions related to what?—A. The whole gamut of the price relationships involved in your question.

Q. I know, but I would rather have you tell me than me tell you. Did you talk about terms, the prices at which various items should be sold?—A. Yes.

Q. Down the line?—A. As far as you stated.

Q. That is what I am talking about.—A. Yes, sir.

Q. In other words, you talked about the price at which Soft-Lite lenses should be sold by Bausch & Lomb to Soft-Lite Lens Company?—A. Correct.

Q. The prices at which Soft-Lite Lens Company should sell their Soft-Lite lenses to its distributors?—A. Correct.

Q. And the prices which Soft-Lite Lens Company should list on the price list, from the wholesalers to the licensed retailers?—A. Correct.

Q. Did you talk about changes in terms of prices from time to time?—A. I do not understand what you mean by
1048 "terms."

The COURT. Price revision.

Q. Price revision, that is a good question. Did you discuss price revision?—A. Yes.

Q. To use your words, the gamut, to the extent I indicated?—A. Correct.

Q. How frequently would you say you had those discussions in the last five years?—A. Half a dozen times.

Q. Every time a revision came up, did you not?—A. I think so.

Q. Every time a revision was made by Soft-Lite Lens Company Mr. Singer came and talked to you about it, did he not? Your best recollection.—A. I think that that circumstance never arose, except when there was a price change from us to Soft-Lite.

Q. Didn't Mr. Singer come to you and tell you that he was proposing a price change, and said that he wanted to get your price to him down, or up? He never did the second, did he?—A. I do not understand the question.

Q. I am confusing you. When the time came, whenever it was, when Mr. Singer talked to you about price revision to the extent of the gamut that you indicated—I am taking your word—where were those conversations?—A. I could not recall. I cannot recall where.
1049 Q. Rochester or New York?—A. Well, unless I know specifically what it is you are talking about I cannot say. It might have been in either place.

Q. You spend most of your time in Rochester, don't you?—A. Yes, sir.

Q. You very rarely leave Rochester, do you?—A. I cannot say that. I very frequently leave Rochester.

Q. You do?—A. Yes.

Q. You misunderstood my question. I thought you spent most of your time in Rochester.—A. I do.

Q. Isn't it part of your function in Rochester to take care of price lists and revisions of price lists at Rochester?—A. Lens prices?

Q. Yes.—A. Yes, sir.

Q. And you have been doing that for many years, haven't you?—A. Eight years.

Q. You are the Bausch & Lomb specialist on price revisions, aren't you?—A. On lenses only.

Q. I meant lenses, I am very sorry. I always mean lenses when I talk to you. You and I had this out before on another occasion; you remember that, don't you?—A. Yes.

Q. We always talk about lenses when we talk revision of price lists on lenses. You are a specialist on that at Bausch & Lomb, are you not?—A. I am responsible for it.

Q. That is right, and you are responsible for all price revisions on lenses at Bausch & Lomb, are you not, sir?—
1050 A. I am responsible for working out the details.

Q. That is right, sir. And the people at Bausch & Lomb know it, don't they?—A. They must know it.

Q. And Mr. Singer knows it, too, does he not, and has known it for years?—A. He should know it.

Q. Thank you, sir. He has come to you, has he not, on various occasions in connection with a revision of a price list from Bausch & Lomb to Soft-Lite, to discuss with you proposed revisions of Soft-Lite's price list to the wholesaler and from the wholesaler to the retailer?—A. Yes.

Q. And the revisions include changes in prices of different items, so that we understand each other?—A. Soft-Lite items.

Q. I am always talking about Soft-Lite items. I am talking about talks with Mr. Singer. They included revisions of different items, did they not, sir?—A. Soft-Lite items; yes, sir.

Q. I show you Government's Exhibits 103 and 103-A and ask whether that is your signature [handing paper to witness]?—A. Yes.

Q. And the schedule Exhibit 103-A which is Soft-Lite's Plano-Meniscus, that is in your handwriting to the extent there is handwriting on it?—A. Yes.

1051 Q. You worked that out after talking to Mr. Ramaker, did you not, as indicated in the first paragraph of the exhibit?—A. Your question is, I worked it out after talking to Mr. Ramaker?

Q. Yes, sir.—A. I worked it out, but I cannot say whether it was after or before I talked to Mr. Ramaker.

Q. Let us read the first paragraph and see if it helps you. I am not making you nervous, am I?—A. Yes, you are.

Q. I am sorry. I have a job to do; I do not do it intentionally. You say, "Ben Ramaker has referred to me the whole matter of

Plano Soft-Lite lenses which you have included in your Soft-Lite stock lens set-up." Mr. Ramaker talked to you before you got it up, did he not, or after?—A. I do not know. I really do not know.

1052 Q. He might have done it before?—A. If you find internal evidence on that.

Q. Did he do it before?—A. No. You will find internal evidence to show. I cannot tell you whether I worked this out before or after he referred the matter to me.

The COURT. You mean you do not know whether the schedule was prepared first and then you talked to Mr. Ramaker, or whether you talked to Mr. Ramaker first and proceeded to work out the schedule.

The WITNESS. I do not know.

The COURT. You certainly talked to Mr. Ramaker before you wrote Exhibit 103?

The WITNESS. Correct.

Q. Now you prepared a proposed price set-up for Soft-Lite lenses, did you not, from Soft-Lite Lens Company to Soft-Lite distributors?—A. Correct.

Q. Besides this one, did you not?

The COURT. You mean besides Plano-Meniscus.

Mr. ISSEKS. Besides Exhibit 103–A; yes, sir.

Q. Over the last six years that was not the only one you got up, was it?—A. I do not know that I ever got up a schedule.

Q. Besides that piece of paper which is a schedule of

1053 prices, and which you sent Mr. Singer in March 1939, Government's Exhibit 103–A, did you on any other occasion write in longhand a proposed price list from Soft-Lite Lens Company to wholesalers?—A. I may very well have done so, but I don't remember it.

Q. What is your best recollection? In the regular course of business did you do it?

Mr. SEYMOUR. Wait a minute. There are too many things in that question. First, it is a price list other than that. That is not a price list. It has some suggested prices on it. Second, in the regular course of business is an importation into the question.

The COURT. But everything he has added has limited the scope of the question, so I have not objected to it. He has not broadened the question. He has narrowed the field.

Mr. SEYMOUR. I think the witness is entitled to have a clear question. He makes two or three additions as he goes along and I think the precise question should be put to him.

The COURT. Perhaps you can start with a proper question: Did you ever prepare any other schedules of suggested prices for the use of Mr. Singer other than Exhibit 103–A?

The WITNESS. Do you mean the question to include also in longhand and in typewriting?

1054 The COURT. Forget about it being in longhand or in typewriting. It might have been on a slate for all I care.

The WITNESS To the best of my recollection, I did.

Q. Thank you, sir. Who was present at any other time when a schedule besides 103 was prepared, if you remember?

The COURT. I do not follow that. He was present. We have not a conference on it yet.

Mr. ISSEKS. All right. It is my fault.

Q. You said to the best of your recollection, "I did." Do you remember when?—A. You are talking about the year? I can tell you the occasion but I won't name the year.

Q. I will take the occasion if the Court will permit us.

The COURT. Yes.

A. The occasion was in regard to Soft-Lite Orthogon D bifocals.

Q. And can you fix the approximate time, sir?—A. 1939 or 1940.

Q. Do you remember where?—A. No, sir.

Q. Probably Rochester, was it not?—A. It might have been Rochester.

Q. And was anybody present besides yourself when you
1055 were doing this, if you remember, sir?—A. I don't remember.

Q. Now we have two occasions; one relating to Orthogon Soft-Lite D bifocals, and one relating to Plano-Meniscus.—A. Correct.

Q. Directing your attention to the fact that you told us about two, I will ask the same question: Do you remember any other occasion when you prepared a suggested price list for Mr. Singer's company?—A. Prepared a suggested price list? No; I have never——

The COURT. Or have you prepared a schedule of proposed suggestions relating to prices on any Soft-Lite products other than the two you have mentioned?

The WITNESS. I really don't remember.

Q. You would not say you did not though?—A. I would not say I did not.

Q. Now have you any recollection of ever having had a conference with Mr. Singer at which you had in front of you a draft of a suggested revised price list on any Soft-Lite product?

Mr. SEYMOUR. If your Honor please, I object to the form of that question. I think counsel ought to indicate whether he means suggested by the witness or suggested by Mr. Singer.

Mr. ISSEKS. Suggested by either one.

1056 A. I do not recollect. My memory might be refreshed. I do not recall.

Q. But you would not deny that such a thing took place?—A. No; I do not deny it.

Mr. ISSEKS. No further questions, your Honor.

Cross-examination by Mr. SEYMOUR:

Q. You have been interested in the Lens Sales Department for eight years, Mr. Sterling?—A. Yes, sir.

Q. And during that time you have had a number of talks with Mr. Singer?—A. Yes, sir.

Q. In the course of those talks did you discuss the price at which Bausch & Lomb was to sell Soft-Lite to Soft-Lite Company?—A. Frequently.

Q. Did those occasions come about at the suggestion of Mr. Singer or at your suggestion?

Mr. ISSEKS. I object unless the witness knows.

The COURT. Well, of course.

Mr. ISSEKS. I want to make it clear, because the witness has indicated he is a subordinate. I do not mean to in any sense indicate he does not have a responsible position.

The COURT. I will instruct the witness generally that the questions should be answered only on his knowledge, and if he does not know, "I do not know" is a perfectly proper answer.

1057 A. If I understand the question, it is, were those discussions regarding price revisions made at my suggestion or Mr. Singer's?

Q. Yes.—A. Without being able to state that always there was one person that suggested, I will state that I do not remember any except those which were instituted at my suggestion.

Q. Now from time to time since you have been connected with the Lens Sales Department, has the price to Soft-Lite of Soft-Lite glass or Soft-Lite lenses been reduced?—A. Yes. During the last eight years we have never discussed any price revision except a reduction.

Q. When you have discussed questions of price along the gamut that Mr. Isseks asked you about, have those discussions always been connected with a discussion of a change in price from Bausch & Lomb to Soft-Lite?—A. Yes.

Q. Did you indicate in the course of any such discussions why you were interested in the price at which Soft-Lite should sell to the wholesalers?—A. Yes.

Q. What did you indicate on that subject?—A. I indicated on that subject that any price reduction that would be given by Bausch & Lomb to Soft-Lite would have to reappear in the ultimate market. There would be no reason for our lowering

1058 the price to Soft-Lite except for enlarging the market for our merchandise.

Q. Were you interested in that connection in the price at which Soft-Lite would sell to the wholesaler?—A. Was I interested?

Q. Yes.—A. Yes; I wanted whatever reduction we gave to Soft-Lite to reappear.

The COURT. The witness has so indicated. He indicated he wanted the benefit of the reduction to be passed along.

The WITNESS. It had to be passed along.

Q. Did that apply to the passing along of the advantage to the retailer as well?—A. Certainly.

Q. Was that the reason for your discussions of price with Mr. Singer along the lines which Mr. Isseks asked you about?—A. Beyond the expression of our price to Soft-Lite?

Q. Yes.—A. Certainly.

Q. Every time that you discussed with Mr. Singer or any other representative of Soft-Lite the question of price to Soft-Lite, you also discussed the question of whether the saving would be passed on, is that so?—A. Your question was every time?

Q. Yes.—A. To the best of my knowledge, it would be every time; every time I knew about it.

1059 Q. When such discussions occurred, did you tell Mr. Singer the price at which Soft-Lite must sell to the wholesaler or must list as the price at which the wholesaler should sell to the retailer, or did he suggest those prices and discuss them with you?—A. I never told him what he must sell at.

Q. Did Mr. Singer or any other representative of the Soft-Lite Company who discussed questions of price with you, decide, so far as you know, the prices to be charged by Soft-Lite to the wholesaler, listed as to be charged by the wholesaler to the retailer?—A. I had no interest in the specific prices. I only wanted to assure myself that the savings that were given by us be passed on through the market.

Q. Did you decide the questions of what prices Mr. Singer should charge, or what prices should be charged, by the wholesaler to the retailer, or did Mr. Singer decide that question?—A. Mr. Singer always decided it.

Q. You discussed with him the subject matter of that decision, that is the fact?—A. I discussed with him the subject matter?

Q. Yes.—A. I made it perfectly plain that the saving must reappear in whatever form.

1060 Q. Did you tell him the specific price which must be charged either by Soft-Lite to the wholesaler or listed as the price to be charged by the wholesaler to the retailer, in connection with passing on that saving?—A. No.

Q. Was that question decided by Mr. Singer in every instance?—A. Always.

Q. Is the preparation of a complete price list of an optical line, a complicated operation?—A. Very.

Q. What are the complications of the preparation of such a price list, speaking generally, and not with reference to any particular price list?—A. Well, the first complication that I will mention will be the multiplicity of powers and types of lenses involved. There can be no doubt that lenses of high power, strong foci, are more difficult to manufacture and more expensive to make, and more difficult to fit, than those of weak power. Before a schedule covering all possibilities can be developed, someone must determine the progression from those which are relatively simple to those which are complex.

Q. That is, you start with a certain base?—A. Always start with a base. Someone must determine to the best of his ability the relative expense of the various foci and powers involved. Then there is this strictly commercial consideration of quantities purchased at one time. Our present price list is divided up from wholesale to retail in four columns.

Q. When did that columnar form become adopted in the industry generally?—A. It became adopted in the industry
1061 generally? By us? I don't know about the industry but by us it was adopted in February, 1939, but by the industry subsequent to that date.

Q. Was that the first time that price lists, so far as you know, in the optical industry, had been based on a columnar structure?—A. It was not.

Q. Had Bausch & Lomb used the four-column structure prior to February 1939?—A. Yes, sir.

Q. Had Soft-Lite used the four-column structure as far as you know prior to that time?—A. I do not know.

Q. Referring to Exhibit 103-A, is there a reference there to a base price which Soft-Lite had indicated it suggested, and a reference to the base price which you suggested?—A. That reference is there.

Q. Which column does it appear in?—A. "Wholesale to retail. Net column prices, 10 pairs assorted."

Q. Did you make any suggested change in the base price which had come to you as a suggestion from Soft-Lite?—A. No, sir.

Q. Where did the changes suggested by you occur in that list?—A. In the 25 pair and 50 pair column.

Q. Do you know whether Soft-Lite, prior to that date, had been selling Plano-Meniscus in 25 and 50 lot columns?—A. I know they had not.

1062 Q. Had they been selling that size before, do you know?—A. I have no knowledge of it. I think they had not.

Q. Was that a special size?—A. A special size? There was a regular size of 50 millimeters and four special sizes, 57, 63, 71, and 80 millimeters.

Q. Referring to the last column on Exhibit 103–A, there are apparently some figures, not in ink. Have you seen those figures before?—A. Loss 5 per cent; loss 10 per cent?

Q. Yes. Had you seen those figures before?—A. I do not recall.

Q. Are those calculations which were made by you?

Mr. Isseks. It might help the witness if he sees the original. It is very difficult to read a photostat [handing original exhibit to witness].

A. No; I cannot tell. You refer to the numbers in red pencil?

Q. Yes.—A. Well, I cannot tell that, whether they were made by me or someone else.

Q. But certainly the ink figures——A. The minus 12 and minus 37 were written by me.

Q. What did minus 12 and minus 37 in those columns indicate?—A. That indicated that the Soft-Lite Lens Company was proposing to sell in 50 pair assortments—no, that indicated that
1063 Soft-Lite was proposing to make a wholesale to retail price in the 50 pair assorted column that was lower than the price from Soft-Lite to the wholesaler.

Q. In other words, that indicated that the wholesaler would take a loss on that product?—A. That is right.

Q. What was your interest in making a suggestion of a price in those columns which would give the wholesaler a profit, rather than have him take a loss?—A. Well, my interest was in a consistent pricing set-up to be workable.

Q. What were you doing in preparing this suggested list; suggesting a different pricing formula to be applied to the same base price?—A. Yes; a different—and when you say pricing formula—a different relationship, between the 25 and 50 pair column to the 10 pair column than that which they had, perhaps.

Q. The result of your suggestion, if it was adopted, would be that the wholesaler would make a profit on certain of these lenses, whereas the Soft-Lite's proposal would have resulted in a loss, is that right?—A. That is true.

Q. What was Bausch & Lomb's interest in whether the price would provide a profit for the wholesaler?—A. If it did not provide a profit for the wholesaler, I cannot imagine a condition under which the wholesaler would handle it.

1064 Q. Were you interested in the volume of the Soft-Lite sales by Bausch & Lomb?—A. In the volume of sales by Bausch & Lomb to Soft-Lite?

Q. Yes.—A. Certainly.

Q. If the wholesaler did not make a profit, did you consider that would help your volume?—A. I knew it would not.

Q. Referring to the memorandum prepared by you, which Mr. Isseks showed you yesterday, Exhibit 202, had you, either before or after you prepared that memorandum, ever seen a price list prepared by Soft-Lite Company or anyone else, indicating the prices which the retailers should charge to their customers for Soft-Lite lenses?—A. I have never seen such a schedule before then or after.

Q. In referring to a list, were you referring to any list that you had actually seen or knew about?—A. May I see the memorandum?

Q. Page 2, I think [handing exhibit].

Mr. Isseks. The second page, on the bottom of the page.

A. You are referring to the sentence, "If the retailers are not able to obtain the high prices listed"?

Q. Yes. Had you ever seen any list, or did you ever hear of such a list being in existence?—A. From Soft-Lite——

Q. From the retailer to the customer?—A. From the
1065 retailer to the consumer? Never.

Q. Can you explain what the meaning of that reference was, or was it just a loose expression?—A. It was a loose expression, but the meaning I wished to convey to Mr. Ramaker was that if the retailers are not able to obtain the high prices that they ask, this becomes a matter of vital concern to us.

Q. That is, you were not referring to any price at which the retailers were directed to sell this product?—A. No.

Q. Did you ever hear of any such direction by Soft-Lite Company?—A. Never.

Q. Did you ever direct anyone to see to it that a particular retail price was obtained for Soft-Lite lenses?—A. Never.

Q. Mr. Sterling, are you familiar with the Nokrome glass patent licenses?—A. I think so.

Q. I show you Exhibit 163 and ask you whether that license was entered into following the litigation between Bausch & Lomb and Titmus Optical Company with respect to the patents?

Mr. Isseks. I will stipulate it.

Mr. Seymour. Will you also stipulate that the Shuron license on Nokromes was also entered into after litigation between
1066 Bausch & Lomb and Shuron Optical Company?

Mr. Isseks. If Mr. Seymour will so state, I will take his statement. I do not happen to know that. I know the other one.

Mr. Seymour. The Shuron license was entered into following the commencement of a patent infringement suit by Bausch & Lomb.

Mr. Isseks. On Mr. Seymour's say-so, I will take it.

The Court. You do say so?

Mr. Seymour. Yes.

Mr. ISSEKS. And I am told in the second case, the Titmus Optical Company won the lawsuit. I don't think it makes much difference.

Mr. SEYMOUR. It makes this difference, that your statement is wholly incorrect.

The COURT. Anyway, that is not the issue. The question was purely one of time. The suggestion was you stipulate that in both cases the licenses were entered into following the commencement and/or conclusion of certain litigation.

Mr. ISSEKS. I will stipulate that.

Mr. SEYMOUR. Mr. Isseks' statement he will find is incorrect.

1067 Mr. ISSEKS. If I was misinformed I am willing to admit it.

Q. Did you discuss the terms of the license agreement between Bausch & Lomb and Titmus with anyone else connected with Bausch & Lomb?—A. Mr. Ramaker and Mr. Ellestadt.

Q. Mr. Ellestadt is a patent attorney?—A. Mr. Ellestadt is a patent attorney.

Q. Were you familiar with the provision with respect to Soft-Lite prices in that license?—A. Yes.

Q. Did you discuss with the other gentleman the reason for such a provision?—A. Yes.

Q. Will you tell us what the reason for that provision so discussed was?—A. The reason for the provision was that on the Nokromé bifocal I did not propose to permit, if I could help it, any license arrangement to either Titmus or Shuron that would permit them to undersell our market, which was Soft-Lite in tinted glass—likewise applied to white—permit them to undersell our market——

The WITNESS. May I have my answer read?

(Answer read.)

Mr. ISSEKS. You used the words "Soft-Lite."

The COURT. Yes; he said Soft-Lite.

(Answer read as follows:) "The reason for the provision
1068 was that on the Nokrome bifocal I did not propose to permit, if I could help it, any license arrangement to either Titmus or Shuron that would permit them to undersell our market, which was Soft-Lite in tinted glass—likewise applied to white."

The WITNESS. I will let my answer stand right there, "likewise applied to white."

Q. So far as white is concerned, you were not concerned about your market in Soft-Lite, were you?—A. No.

Q. So far as tinted lenses made by these competitor manufacturers, you were concerned about your interest in Soft-Lite sales, is that correct?—A. Certainly I was.

Q. And was the reason for this provision to prevent the companies which were getting the privilege of using your patent from selling at a price lower than the Soft-Lite price to wholesalers?—A. That states it exactly.

Q. It was to protect your patent and your interest in Soft-Lite sales, is that correct?—A. That is right.

Q. Are you familiar with Government's Exhibit 164 [handing]?—A. I was not familiar with that specific memorandum. I know the facts.

Q. Did you discuss the subject matter of that memorandum?—A. Yes.

Q. Did you discuss it with others connected with Bausch & Lomb?—A. That is right.

1069 Q. Will you give us the substance of those discussions if the reason for that modification in the Shuron license was discussed?—A. This modification of the Shuron license is that the prices charged by the Shuron Optical Company under the Nokrome patent, insofar as they apply to tinted lenses, shall be the prices of Soft-Lite lenses to the wholesale trade—exactly the same reason applied. I wished to protect our market on our patented lenses in tint and in white.

Q. Isn't it a fact that after the original Nokrome license to Shuron, Shuron had indicated that it felt free to sell pink tinted Nokrome lenses at the price at which Bausch & Lomb sold Soft-Lite to the Soft-Lite Company?—A. Yes, sir.

Q. Rather than the price at which the Soft-Lite Company sold to the wholesalers?—A. Again yes.

Q. And isn't it a fact that the purpose of that provision, as discussed prior to the making of the entry of the change indicated in Exhibit 164, was to make it clear, as it was later made clear in the Titmus license, that the price at which Shuron could sell its Nokrome pint-tinted lenses was the price from Soft-Lite to the wholesaler?—A. To that I answer yes, but with one reservation. I do not know whether it was later or earlier. But so far as the reason is concerned, that was the reasoning strictly.

1070 Q. Following the issuance of the Shuron license on Nokrome and the Titmus license on Nokrome, and the modification of the Shuron license which is Exhibit 164, were those companies required to adhere to the provision with respect to their prices vis-a-vis Soft-Lite prices?—A. No.

Q. Were you familiar with the correspondence which Mr. Ramaker had had with Mr. Singer about Panoptik Soft-Lites?—A. That is pretty general. I presume I was familiar with it. I do not know what correspondence you are talking about.

Mr. SEYMOUR. I would like to offer a letter from counsel for Bausch & Lomb to Bausch & Lomb, which completes a series of

correspondence which the Government put in on the Panoptik situation. You have seen it.

Mr. Isseks. I have seen it, but there is nothing to show it was ever passed on to Singer or Soft-Lite Lens Company. If there is any reference there showing it went to Soft-Lite, I have no objection, because this is a self-serving declaration coming from their own lawyers to them, and coming from their own files.

Mr. Seymour. If that objection had applied to all the evidence in the case, we would not have been here so long.

1071 The Court. This is in the nature of an inter-office communication; is that right?

Mr. Isseks. From counsel to Bausch & Lomb.

The Court. Yes; to Bausch & Lomb.

Mr. Isseks. I have seen it.

Mr. Seymour. It is dated June 25, 1937.

The Court. I will overrule the objection.

(Marked "Defendants' Exhibit DD.")

Q. Is the Duo-Site lens manufactured by Bausch & Lomb?—A. Yes.

Q. Is it manufactured in Soft-Lite for the Soft-Lite Company? A. Only in Soft-Lite.

Q. And has that been sold by the Soft-Lite Company for some time?—A. Yes.

Q. Is the Orthogon D lens in white manufactured in Soft-Lite for the Soft-Lite Company?—A. Yes, sir.

Q. Was there a general change in the prices of Orthogon D made in 1940?—A. Yes.

Q. Had that been the subject of discussion at Bausch & Lomb for some time?—A. Yes.

Q. Had you discussed it prior to the summer of 1940?—A. Frequently.

Q. Did there come a time in July 1940 when a final decision was reached on Bausch & Lomb that such a reduction would be made?—A. In white.

1072 Q. Had you told Mr. Singer prior to that time that that subject was under consideration?—A. The question is, had we told Mr. Singer prior to that time?

Q. Yes.—A. Either at that time or prior to the time.

Q. When that decision was reached did you discuss with Mr. Singer any change in the price by Bausch & Lomb to the Soft-Lite Company or Orthogon D in Soft-Lite?—A. Yes.

Q. Over how long a period did such discussions continue?—A. A period of weeks or months.

Q. That was in the summer of 1940, was it?—A. Well, yes; the summer of 1940, and perhaps in the spring.

Q. Was the price by Bausch & Lomb to Soft-Lite on Orthogon D Soft-Lites changed?—A. Yes.

Q. In connection with that change did you discuss with Mr. Singer his suggested changes in prices by Soft-Lite Company to wholesalers? And the suggestions by Soft-Lite Company to wholesalers as to sales price to the retailers?—A. I not only discussed it but insisted on it.

Mr. ISSERS. I did not get the question.

The WITNESS. I not only discussed it but insisted on it.

(Last question and answer read by reporter.)

Q. That is, you insisted that some change should be made if the Soft-Lite Company got that reduction?—A. As far as
1073 I was concerned a reduction to Soft-Lite by Bausch & Lomb was strictly contingent upon having that saving passed on to the trade.

Q. At that time did you tell him the price at which Soft-Lite Company must sell to the wholesalers?—A. No.

Q. Did he suggest a price at which Soft-Lite would sell to the wholesaler in connection with those discussions?—A. I cannot answer whether he suggested a price or not. He indicated that he would carry out the points we were insisting upon.

Q. That was that the saving should be passed on; is that right?—A. Yes; he said he would do the right thing.

Q. Prior to the summer of 1940 had there been any reduction in price by Bausch & Lomb to Soft-Lite Company on Duo-Site?—A. Yes.

Q. When had that occurred?—A. Oh, about 1932.

Q. And at that time was there a discussion about passing on the saving?—A. I think there was, but that is quite a while ago. But I think there was a discussion at that time.

Q. Do you know whether or not a change had been made Soft-Lite Company in its Duo-Site price to wholesalers?—A. I know a change had not been made.

Q. In the summer of 1940, in respect to discussion about the change in price by Bausch & Lomb to Soft-Lite on Orthogon
1074 D——A. Wait, my continuity is broken. I do not know what you said.

(Question read by the reporter.)

Q. Was there any discussion with Mr. Singer or anybody else representing the Soft-Lite Company about Duo-Site?—A. Yes.

Q. Was there any suggestion by Mr. Singer that his price to the wholesaler on Orthogon D should be the same as his price to the wholesaler on Duo-Site?—A. I think he made that suggestion.

Q. And when the price of Soft-Lite Company to the wholesaler and the suggested price by the wholesaler to the retailer was issued, was it a different price than the Duo-Site price?—A. It was different. You are talking about 1940?

Q. 1940.—A. Yes; it was different.

Q. Who suggested the precise price at which Orthogon D in Soft-Lite should be listed by the Soft-Lite Company, from Soft-Lite Company to the wholesaler, and as a suggested price from the wholesaler to the retailer, at that time?—A. I don't know. I didn't.

Q. Did you hear Mr. Ramaker suggest it?—A. I don't recall.

Q. Do you recall any other discussions in the summer of 1940 with respect to the change in price which Bausch & Lomb
1075 was making at that time to Soft-Lite Company?—A. Yes; that was discussed frequently.

Q. Do you recall the substance of those discussions beyond anything I have asked you about?—A. I think Mr. Ramaker and I both made it clear to Mr. Singer that a reduction in the price from Bausch & Lomb to Soft-Lite for Orthogon Ds in Soft-Lites would be contingent upon his passing that saving on through the market.

Q. Did you make it clear that it was contingent upon his adopting any particular price, or merely that the saving should be passed on in the price?—A. The saving would have to be passed on. No specific prices were considered.

Q. In connection with those discussions about passing on savings, so far as you know who determined the precise price at which Soft-Lite Company should sell to the wholesaler and should suggest to the wholesaler as the price at which the wholesaler should sell to the retailer?—A. Mr. Singer.

Q. In those discussions as far as you were concerned it was the general policy of passing on the saving that you insisted upon; is that correct?—A. It was the general policy of passing on the saving. Mr. Singer took it under advisement to see what he could do, consulted with his customers, his staff; he gathered his ideas together, and we insisted upon being satisfied in our own
1076 minds that the saving that we were passing to him was truly and actually being passed on—which had not been the case with Duo-Site.

(Short recess.)

Q. Referring to your direct examination yesterday by Mr. Isseks, Mr. Sterling, the question was asked at page 1012: "Q. That was your understanding at the time?" Your answer is recorded as, "Our retail price is not of their making." Is that answer correctly transcribed?—A. I did not say that.

Q. What did you say?—A. I said the retail price is not of their making. We have no retail price.

Q. I show you this document [handing to witness], and ask you whether this is a copy of a letter which you wrote to Mr. Landis on March 30, 1939?—A. Yes.

Mr. SEYMOUR. I offer that in evidence.

The COURT. Any objection?

Mr. Isseks. No objection, your Honor.

(Marked "Defendants' Exhibit EE.")

Q. Now referring again to your discussions with Mr. Singer in the summer of 1940 with respect to reduction in the Orthogon D Soft-Lite price from Bausch & Lomb to Soft-Lite Company, was there any suggestion made at that time that the Soft-Lite Company's policy with respect to passing on that saving should
1077 be contingent on anything else?—A. It was. That was suggested.

Q. Will you give us the substance of that discussion as far as you recall?—A. The substance of the discussion was that we were considering a reduction in price of Orthogon Ds in Soft-Lite, and we insisted that whatever saving we might make to him in his buying price from us would have to be passed on to the trade, in order that we might get the additional volume that would result from a reduction in price. Mr. Singer was not clear, to me at least, in his acceptance of that idea, because he advanced the thought that in order for him to pass that reduction in Orthogon D on, he must also have a reduction from us on Duo-Site.

Q. Was Duo-Site the same as Kryptok?—A. Duo-Site is the trade name for Soft-Lite Kryptok.

Q. As to Duo-Site there had been an earlier reduction by Bausch & Lomb?—A. In 1932, I think I said.

Q. To the Soft-Lite Company?—A. About 1932.

Q. And in that case the saving had not been passed on?—A. By Soft-Lite to the wholesalers?

Q. Yes.—A. It had not.

Q. There was a discussion about a further reduction in 1939?—A. There was.

Q. And that is the subject matter of Defendants' Exhibit EE, which I have just shown you?—A. That is right.

1078 Q. In the summer of 1940 Mr. Singer raised the question of a further reduction in Duo-Site?—A. He again raised the question that was covered in that letter.

Q. And what if anything did you or Mr. Ramaker in your presence tell Mr. Singer with respect to that subject?—A. That the matter of our price from Bausch & Lomb to Soft-Lite on Duo-Sites had no relation to the passing on of a saving that we might make to him on Orthogon D.

Q. Is there any other feature of that conversation which you would now recall?—A. Do you mean—you are not talking about the outcome?

Q. I will ask you about the outcome. Do you know whether in fact Soft-Lite subsequently passed on the saving on Orthogon D?—A. They did.

Q. And did they pass it on without relationship to their Duo-Site prices?—A. The Duo-Site prices were not changed.

Q. Following discussions with Mr. Singer on any of these occasions when you discussed with him reductions of price from Bausch & Lomb to Soft-Lite Company, did you always receive an advance copy of the price list which Soft-Lite Company was going to issue?—A. No.

Q. Did you occasionally receive such price lists?—A. I don't remember any time when we did.

1079 Q. You often saw the price lists after they were issued?—A. Oh, yes.

Q. Did you, aside from the Plano-Meniscus matter referred to here in Exhibit 108, ever prepare and give to Mr. Singer a schedule containing details of suggested prices to him, as far as you recall?—A. A schedule of suggested prices by him?

Q. Yes.—A. No; I never did that. Never.

Q. But from time to time you discussed such suggested prices with him?—A. Not in detail. Only in the general matter of the price relationships involved. Never pertinent to the specific prices.

Q. Did you ever discuss with Mr. Singer or any other representative of the Soft-Lite Company the selection of wholesalers by Soft-Lite Company?—A. Never.

Q. Did you ever discuss with Mr. Singer or anyone else connected with——

Mr. Isseks. Your Honor, the witness has several times been taken into new matters. I did not object before because I thought we were going to get through. And I do not object to their going ahead now if it is understood that there will be no leading questions, because the witness is now being taken on direct examination. I have not gone into half the things he is being asked about.

Mr. Seymour. This was covered in the direct.

1080 Mr. Isseks. I never asked about the wholesalers.

Mr. Seymour. You asked about distribution policy.

Mr. Isseks. I talked to him about prices and price lists.

The Court. To the extent that you are going into direct testimony you will have to observe the nonleading rule, of course.

Mr. Seymour. It is not my intention to go into any direct, and this question is a question directly raised by Mr. Isseks's question to the witness on direct as to his discussion of the distribution system.

Mr. Isseks. Your Honor, I never went into the subject matter of Nokrome with this witness; I never went into the subject matter of Panoptiks with this witness. I never went into any question of distribution, other than prices. The record is very clear on that, and anything other than what I have indicated has been their direct examination. I have not objected because I want to get through, and it is taking the time of all of us.

By Mr. SEYMOUR:

Q. Did you ever discuss with Mr. Singer or anyone else connected with Soft-Lite Company the selection of retailers or retail customers by Soft-Lite Company?—A. Never.

Q. Did you ever discuss with Mr. Singer or anyone else
1081 connected with the Soft-Lite Company the retail licensing system of Soft-Lite Company?

Mr. ISSEKS. I object, your Honor, as leading.

The COURT. I would not call that a leading question. Objection overruled.

A. Never.

Q. Do you know when Mr. Ben Ramaker became connected with the sales department of Bausch & Lomb?—A. In 1933.

Mr. SEYMOUR. That is all.

Mr. ISSEKS. Is Mr. Lehrich going to examine?

Mr. LEHRICH. No cross.

Redirect examination by Mr. ISSEKS:

Q. Mr. Sterling, you testified that you and Mr. Ramaker told Mr. Singer that any price reduction from Bausch & Lomb to Soft-Lite was contingent on passing the reduction on to the market, didn't you?—A. I did.

Q. Were you interested in the ultimate market?—A. The ultimate market?

Q. Yes; the public, you and I. Of course, you do not have to, excuse me, but the average person goes into a store, buys a pair of lenses—were you interested in that market?—A. Certainly.

Q. Did you say to Mr. Singer "You got to be sure that price reduction goes down the line"?—A. My understanding is that
1082 the law forbids me to have any determination of the ultimate price.

Q. When did you find that out, about the law?—A. I don't know.

Q. When did you find about the law, as you indicated it?——

Mr. SEYMOUR. I object to that.

Mr. ISSEKS. The witness volunteered the answer, your Honor.

Mr. SEYMOUR. It is not material, and I do not think the fact that the witness volunteered the statement makes it material.

The COURT. We are now in a speculative field. What difference does it make what he understands the law to be.

Q. My question is, when you talked to Mr. Singer about passing it on to the market, did you ever tell him it has to be passed down the line?—A. To the retailer?

Q. Yes; I will take the retailer first.

The COURT. The consumer.

A. To the consumer, never.

Q. To the retailer?—A. Yes.

Q. You did tell him you wanted the saving passed down to the retailer, did you not?—A. Yes.

Q. You did it more than once, didn't you?—A. Yes.

Q. And Mr. Ramaker did it, in your presence, more than
1083 once, didn't he?—A. I think Mr. Ramaker and I were in perfect agreement on that point.

Mr. ISSEKS. I am sorry, I will have to ask your Honor to direct the witness to answer my question.

The COURT. You can answer that yes or no. I think it is capable of that kind of answer. Did Mr. Ramaker make that suggestion in your presence on more than one occasion?

The WITNESS. Yes, sir.

Q. You were also interested in the price from Soft-Lite Lens to the wholesalers for another reason, were you not? See if I can direct your attention. You are hesitating.—A. I do hesitate.

Q. 68 percent of all Soft-Lite's product was being purchased by the affiliates, was it not, in the year 1939?

Mr. SEYMOUR. I object to this, if your Honor pleases, because this is apparently something on the matter of control.

Mr. ISSEKS. Oh, no.

Mr. SEYMOUR. Which I thought we were not going to go into.

Mr. ISSEKS. I am not going to go into control.

The COURT. Whether there were other reasons, other than general absorption in the market, which prompted this witness
1084 to pass on the saving. He is directing his attention to the fact that some company in which Bausch & Lomb had an interest was a customer.

Q. I show you Exhibit 33, which says that for the year 1940 the affiliates bought 68 percent wholesale from Soft-Lite, and for the previous year 68, and the previous year 67. Wasn't that one of the reasons expressed by you to Mr. Singer, when you said to him that the price reduction from Bausch & Lomb to Soft-Lite would be contingent on passing the reduction on to their market?—A. To their market?

Q. Yes.—A. Yes, sir.

Q. Wasn't the 68 percent bought from them by the affiliates one of the things you mentioned to him when you talked to him?—A. The 100 percent bought by all the wholesalers was a matter of concern to us.

Q. You were not interested in the 68 percent, were you?—A. Certainly I was interested in the 68 percent, and the remaining 32 percent.

Q. In answer to a question by Mr. Seymour you said you were interested in a consistent pricing set-up. Did you use those words?—A. I presume so. It sounds right.

Q. In other words, in 1939 when you were talking about Government's Exhibit 103 and you had various conversations and correspondence, your company was making a revision of its
1085 prices, was it not?—A. I believe we had already made it.

Q. (Handing paper to witness.) You had put it out already?—A. Yes; we had already made a revision of our prices.

Q. Yours went out some time in February, 1927?—A. Correct.

The COURT. What date?

Mr. ISSEKS. February 27, 1939.

Q. You were interested when you got up this schedule, I think you said, in a consistent pricing set-up.—A. Correct.

Q. And you were interested in seeing that Soft-Lite in its sales to wholesalers and its suggested prices from wholesalers to retailers was following a pattern, were you not?—A. Yes; I was interested in a consistent price set-up. I was interested in their following a pattern. I was interested in seeing that the prices within the pattern that they had proposed should be consistent.

The COURT. By "consistent" do you mean having a logical relationship one to the other?

The WITNESS. Having a logical relationship one to the other. The deduction of 25 cents per pair extra from the 10-pair prices and then adding 10 cents per pair—I was interested in seeing that those bore a relationship, as far as this could be determined,
1086 in conformity with the facts and costs involved.

Q. And that consistency related also to what you were doing, Bausch & Lomb, as compared with what they were doing?—A. What they were doing was not the same. What I proposed was not the same as what they were doing.

Q. You were not interested in the fact they were following something similar to yours, were you?—A. Something similar?

Q. Yes.—A. The proposal as it seemed to me was based on a four-column set-up, and that was similar to what we had done. I was interested in seeing that the prices within the framework of that set-up should be consistent.

Q. When you were making suggestions for him you were not changing your mode of mental operation, than when you made them for Bausch & Lomb, which was part of your regular work?—A. Certainly not.

Q. You used the same mental processes, didn't you, based on your same experience?—A. I cannot tell you what mental processes I used.

Q. I mean the same. You did not change your thinking when you were doing it for Soft-Lite, did you?

Mr. SEYMOUR. I think that is pretty speculative.

The COURT. Yes.

Q. Were you paid anything by the Soft-Lite Company for anything you did for them?—A. Was I paid by Soft-Lite
1087 for anything I did for them?

Q. Yes.—A. Yes, sir.

Q. A salary?—A. No, sir.

Q. Did they give you anything?—A. No, sir.

The COURT. Then how were you paid? He meant whether you received any compensation for preparing the schedule.

The WITNESS. Oh, no. The answer is no.

Q. That is what I thought. When you said yes before the answer was no. You misunderstood me.—A. I understand your question did Soft-Lite pay me anything for anything I did for them.

Q. I will ask you that question. Did they?—A. Yes.

Q. For what kind of work?—A. Advertising.

Q. When was that?—A. Oh, back about 1930, 1928; something like that.

Q. Were you working for Soft-Lite then?—A. No.

Q. Working for Bausch & Lomb?—A. Correct.

Q. Did Bausch & Lomb know about it?—A. I don't know. Do you say "do" or "did"?

Q. Did they know then?—A. I don't know. I think not.

Q. Were you paid for the work you did in connection with Government's Exhibit 103?—A. No.

Q. In 1939 your salary was being paid by Bausch & Lomb?—A. Yes; from 1920 on.

1088 Q. You did this work in connection with your work for Bausch & Lomb, did you not?—A. Correct.

Q. You also testified, I believe—and you can correct me if I am wrong, please—that these conferences were initiated—I think the word you used was "instituted" at your suggestion, the conferences you had with Mr. Singer. Did I hear you correctly, or did I misunderstand you?—A. Conferences with regard to reduction of prices?

Q. Yes, sir.—A. I think I said that. I recall only those that were initiated by us.

Q. Was this document here, Government's Exhibits 103 and 103-A, initiated by Bausch & Lomb or by Soft-Lite Lens Company [handing to witness]?—A. I can only answer to the best of my knowledge and belief. To the best of my knowledge and belief it was initiated by us.

Q. That is, you suggested, your company, the kind of price list Soft-Lite ought to put out with regard to Plano-Meniscus lenses, from Soft-Lite to the wholesaler and from the wholesaler to the retailer?—A. I don't mean anything of the kind.

Q. I am very sorry, then I misunderstood your answer.—A. May I read from the direct evidence—I mean from the internal evidence? "As I explained to you"—I am now addressing Mr. Singer—"in Boston, the scheme that you originally had runs
1089 the wholesalers into a loss in the largest sizes and 50-pair quantities." I called attention to that.

Q. But had he spoken to you first?—A. No; I think not. I think I was the one who brought that to his attention first.

Q. Did he show you something before you made the comment?—A. Again the letter says, "Ray suggested"—that means Ray Landis—"that your resale price to wholesalers would be the list prices arrived at by the above formula—that is, 15 cents per pair less than our ten pair net column price for Crookes plano."

Q. Then your best recollection is that the suggestions came from Bausch & Lomb?—A. My recollection is very clear on this point: that the plano-meninscus lenses to which this discussion pertains were new business for both Soft-Lite and us. Soft-Lite proposed to purchase those lenses from us, and they figured out both the prices at which they would buy it from us and the figures at which they proposed to sell. We accepted their figuring on the prices that they would pay to us on a formula which has been mentioned several times in this particular trial. That formula is that the price from Bausch & Lomb to Soft-Lite should be 10 cents per pair less the discount, which varies from 33⅓ to 40 percent.

The COURT. You mean the differential?

1090 The WITNESS. The differential, the price over white. Whatever the white price is plus 10 cents minus——

The COURT. The standard discount.

The WITNESS. Minus the discount pertaining on that particular product. And Mr. Landis made it clear to us that this was new business to them and to us and that they thought that would be the price at which we would sell to them, in accordance with their formula, and they proposed to sell those lenses to the trade at the list prices arrived at by the above formula. We accepted the price from Bausch & Lomb to Soft-Lite because that price was entirely agreeable to us. So in a sense they were offering to pay us those prices for this merchandise. Those prices were agreeable to us. And Ray Landis indicated that they proposed to resell them to the trade at a list price which was taken from our Crookes glass prices, and I looked at those and observed that the prices at which he proposed to resell he would require—he would be requiring the wholesalers to resell at a price less than that they paid to Soft-Lite.

Q. In certain groups?—A. In the last two items. I called that to their attention. I volunteered a suggestion which I believed

would be more logical. I wrote this letter to Mr. Singer. I received word from Mr. Singer that he agreed it was more
1091 logical, and that he proposed to put it into effect in toto.

Q. Do you want to say anything else?—A. No. Have I answered the question?

Q. You have done a swell job; thank you very much. You were asked about this Nokrome matter, which I did not ask you about, but as long as you were asked about it I think I will ask you some questions. Mr. Seymour, in his question indicated that Government's Exhibit 164 was written at some time subsequent to the execution of the agreement between Shuron and Bausch & Lomb. I call your attention to the fact that the agreement itself between Bausch & Lomb and Shuron is dated the same date as Government's Exhibit 164, and as a matter of fact Government's Exhibit 164 refers to the fact that the agreement is being executed the very same day. Do you notice that?

Mr. SEYMOUR. I did not notice it, Mr. Isseks.

A. I did not notice that. I did not notice the matter of the dates.

Mr. ISSEKS. I did not want to have any dispute about it. The contract of Shuron, Bausch & Lomb, and Nokrome is dated exactly the same date as Government's Exhibit 164.

The WITNESS. I did not notice that.

1092 Q. You said also that neither Shuron nor Titmus were required to adhere to the prices, namely, the price as indicated in the contract, but that Soft-Lite were. Now, where did you get that information from that you did not require them to adhere to the prices?—A. Well, I know that we did not.

Q. Did you write them a letter and say "disregard the contract"?—A. No, sir; I did not write a letter.

Q. Did you tell them that? Did you tell anybody at either the Titmus or Shuron firms about these agreements, "Don't adhere to them"?—A. No, sir; I did not.

Q. Orally?—A. I did not.

Q. What is the basis of your statement that you say they were not required to adhere?—A. The question as put to me, if I recall, did we require Titmus and Shuron to adhere to those prices?

Q. Yes, sir; that is the question, and you said no. How do you know?—A. The answer is no.

Q. They signed the contract and you made them sign it you said, and negotiated it, and they signed a written document, and you meant what you said when you made them sign it?—A. Correct.

Q. How do you know whether they are adhering?—A. Whether they are adhering?

Q. Yes.—A. I know they did not.

1093 Q. How?—A. Shuron published the price list in which they are not the same.

Q. Did you write them a letter telling them not to adhere?—A. No.

Q. Did you write a letter to Titmus?—A. Did I write a letter to Titmus?

Q. Anybody in your company, either to Titmus or Shuron, saying "forget about the contract"?—A. No; I do not think so.

Q. You were shown a document here, Defendant's Exhibit EE. It says in the third paragraph, "Our white Kryptok prices have been determined by competitive conditions which none of us have been able to govern." You meant by that that other people were selling white Kryptoks?—A. Correct.

Q. Shuron.—A. Yes.

Q. Then you go on to say, "But the situation on Duo-Site and Soft-Lite D, etc., has not been governed by competitive conditions."—A. Yes.

Q. "But the situation on Duo-Site and Soft-Lite D, etc., has not been governed by competitive conditions"?—A. That is right.

Q. In other words, you mean by that that they have no competitors?—A. Indeed I did not mean anything of the kind.

1094 Q. Will you tell me what you mean. You wrote it.—A. I have already testified that in 1932 we gave a reduction in Soft-Lite to Duo-Site and they never passed the saving on. They put the money in their pockets.

Q. Is that what you meant by that phrase?—A. Our white Kryptok prices have been determined by competitive conditions which none of us have been able to govern?

The COURT. The next sentence.

A. (Continuing.) "But the situation on Duo-Site and Soft-Lite D, etc., has not been governed by competitive conditions." That is true. It had not been governed by competitive conditions because the saving was never passed on. The Soft-Lite Duo-Site is a proprietary trade name——

Q. You meant by that that they had not any competition?—A. No indeed; I did not mean that.

Q. You meant they could maintain the price without having any competition; that whatever price they put on it governed rather than a price of A. O. or Shuron, did you not?—A. We had decided to follow the competitive situation in the white Kryptok market.

Q. That is right.—A. Right. Soft-Lite had——

Q. Go ahead. Soft-Lite what?—A. Soft-Lite had made no change in duo-site prices at the time the changes in the white prices occurred.

Q. And that is what you meant when you said, "The
1095 situation on Duo-Site and Soft-Lite D, etc., has not been governed by competitive conditions"?—A. You say that is what I meant?

Q. Yes.—A. That is what I mean now.

Q. Your counsel offered that exhibit.—A. Yes, sir.

Q. Now you also told your counsel that as far as you could recall, you did not get any price list from Soft-Lite ahead of time. You say your company never got any price list ahead of time?—A. No. If I said that then I was speaking on something I had no knowledge of. I do not know when you say "your company." There are a number of individuals. I do not know.

The COURT. You mean that you yourself did not?

The WITNESS. Yes; I will go to the extent of saying that in my official capacity it did not come to my notice within my recollection.

Q. I show you a letter sent to Mr. Ramaker, Government's Exhibit 118, dated March 31, 1939. In that Mr. Landis says: "I enclose, for your information, a copy of our revised price list to distributors and the letter announcing this change—i. e.—the listing of single-vision uncut lenses at 15 cents lower and the continuation of the distributors' quarterly bonus of 10 cents per
1096 pair." * * * "Since the distribution of your price lists is to be held up for a couple of weeks, we will of course, withhold ours as well." Doesn't that refresh your recollection that occasionally price lists came from Soft-Lite before they went out to the trade?—A. I think that was practically coincidental. I believe their price list went out on the first of April and we got it on March 31st.

Q. But you got it ahead of time. I show you a memorandum, Government's Exhibit 120, from Mr. Ramaker to Mr. Hallauer—who was Mr. Hallauer?—A. He was vice president of our company.

Q. Mr. Ramaker writes, "As you know, the Soft-Lite Lens Company contemplate making a change in Balcor and Orthogon single-vision lens prices so as to place them in a better position from a competitive standpoint. * * * We have written them today, advising that our prices," and so on. Does that refresh your recollection?—A. Oh, yes; my recollection is very fresh on that.

Q. Did you get the price list ahead of time in that case?—A. No; I cannot tell you on that.

Q. I show you Government's Exhibit 121, a letter from Mr. Koeth to the Soft-Lite Lens Company, dated March 10, 1936, and

in this letter Mr. Koeth says, "Our acceptance of this basis for billing is contingent upon maintenance of the resale policy of
1097 the Soft-Lite Lens Company as outlined in your letter, 'to distributors on prices' to the effect that a reduction of 10 cents" etc., does that refresh your recollection that in 1936 you got the price list before it went out?—A. I cannot answer the question as to whether we got that price list before it went out, but I will accept on behalf of the company the responsibility for Mr. Koeth's statement.

Q. So you may have gotten price lists from Soft-Lite Lens Company before they were finally published?

Mr. LEHRICH. The witness has not said that.

Mr. SEYMOUR. I inquired of the witness about receiving them and counsel is inquiring about something else.

A. If we got a price list on March 31st and it goes to the trade on April 1st, am I to say that we received those before publication?

Q. In the case of this Plano-Meniscus price list, you got that one before it went out?—A. Yes.

Q. No doubt about that one.—A. Not a particle.

Q. In that case you actually got it before it went out and then you revised it in order to meet the situation.

Mr. SEYMOUR. I object to the form of the question.

1098 Mr. ISSEKS. Strike "in order to meet the situation."

Mr. LEHRICH. I ask that the words "price list" be stricken out. The witness says that was a suggested set-up. Did you get this suggested set-up before it went out?

The WITNESS. Did I get it? I wrote it.

Q. So when you answered Mr. Seymour that you never saw a price list of Soft-Lite Lens Company before it went out, in this case you actually wrote that one?—A. I wrote that price list? I wrote this document. If you identify that as a price list from Soft-Lite to the trade, I did not.

The COURT. We are getting into a verbal discussion which does not lead anywhere. You had some suggestions from Soft-Lite with respect to Plano-Meniscus on which you prepared Government's Exhibit 103–A.

The WITNESS. I did.

The COURT. Of course you got this suggestion from Soft-Lite before Soft-Lite published it to the trade?

The WITNESS. Well, I wrote that particular document.

The COURT. When you wrote Exhibit 103–A, Singer's company had not yet published their proposed price list on plano-meniscus?

1099 The WITNESS. That is right.

Q. You volunteered a statement, and you said they told you in response they were going to accept it word for word and put it into effect?—A. Mr. Singer wrote me to that effect.

Q. And then you knew that that price list was going out and knew that price list was going out before it went out, didn't you?—A. That price list—that was one item, a very minor item of a larger price list.

Mr. ISSEKS. I am through, your Honor.

The COURT. Is there any re-cross?

Mr. SEYMOUR. Just one question.

Re-cross-examination by Mr. SEYMOUR:

Q. Were duo-sites in tint in competition with other Kryptoks made by other manufacturers in tint?—A. Yes.

By the COURT:

Q. I should like to have one thing clarified and Mr. Sterling might be able to do it. Do I understand correctly, every time there was a downward revision of Soft-Lite, it was Bausch & Lomb Company which invited the Soft-Lite Company to receive the benefit of that reduction, and at no time did Soft-Lite come to you and say, "Won't you fellows cut the price?"—A. May I explain in my own words?

Q. Yes; I am very curious about that. I thought it 1100 would be developed, but I did not get the answer.

Mr. ISSEKS. I accept the witness's answers as being exactly what happened, so why should I cross-examine?

The COURT. I am curious to understand that kind of unusual situation. They usually come to the manufacturer and ask for a cut.

Q. And I understand that did not happen in the relationship between Soft-Lite and Bausch & Lomb.—A. It did happen prior to my letter of March something in 1939, in which I stated we could give them no relief on duo-site prices.

Q. You mean in that case they asked for a price reduction?—A. Yes, sir. They asked for price reduction on duo-site in connection with our offering a price reduction on Orthogon D's.

Q. And you refused?—A. And we refused. Now since the beginning of my connection with the lens sales department of Bausch & Lomb there has been a basis on which the prices of Soft-Lite lenses should be predicated, and that is the price for the corresponding white lens, plus 6⅔ cents in single vision and 13⅓ cents in bifocal. Now when any change in the white set-up

comes into existence, then the question of Bausch & Lomb's prices to Soft-Lite was involved.

Q. They were affected?—A. They were naturally af-
1101 fected, because our prices to Soft-Lite, according to that formula, was involved. In my official capacity I took the stand that that formula is not binding at all; no matter what may have occurred prior to 1933, as of 1933 and thereafter that is not binding. I have never received any orders to that effect, I have never seen any agreement or document to that effect, but whenever the question comes up the decision as to whether or not that formula shall apply has been decided by our department on the basis that I have talked about, and that is, we insist upon being assured that whatever price reduction we give shall be specifically for the purpose of increasing our market, and the only way to increase that market that I know of is to pass the saving on through the trade.

We had the experience of the duo-site of reducing the price in 1932, of having no change in the price from Soft-Lite to wholesale, and that was an example of Bausch & Lomb making a reduction in its price to Soft-Lite which did not result in any reduction in the market.

Mr. Isseks. I am sorry, your Honor, but I have only one question.

Redirect examination by Mr. Isseks:

Q. When you talk about reduction in the trade and in the market, I think you said you meant from Soft-Lite to
1102 wholesaler, and from wholesaler to the retailer, is that right?—A. Yes; I mean that.

Mr. Isseks. I just wanted to make that clear.

Mr. Seymour. I want to clear up one thing, due to my oversight in not noticing the date of that Shuron. We asked the witness some questions on the assumption the dates were different.

By Mr. Seymour:

Q. Mr. Sterling, insofar as your discussions about the amendment of the Shuron Nokrome license is concerned, your attention has been directed to the fact that the date of the amendment is the same as the date of the license. Would your testimony be the same, that it occurred before the signing of the main license or the amendment?

Mr. Isseks. I will stipulate it.

The Court. Counsel says it is stipulated. There is nothing further this morning?

Mr. Isseks. We are through, but I would like to rest with a brief outline of what I understand we are going to get, because I would like to let them go ahead.

The Court. Going to get from whom?

Mr. Seymour. You mean on the stipulation?

Mr. Isseks. On two or three items.

The Court. I understood you were going to offer a revised stipulation and rest.

1103 Mr. Isseks. Yes, but there is an exhibit of the Government's, number 155, which we gave yesterday to counsel and they are supposed to let us know whether it is all right to go in.

Mr. Lehrich. No objection.

The Court. I will not take your statement that you are going to rest until after the stipulation is in.

Mr. Isseks. Then may I point out a few other things. We are going to send one of my associates up to Rochester tonight, and I assume they will let him look at two or three other years, 1923, '24, '25, and '26.

Mr. Seymour. Mr. Isseks, I meant to ask you about this off the record. Mr. McQuilliken is going to Rochester this afternoon and can examine those for you instead of having you send someone up.

The Court. No; he wants to have his own man look.

Mr. Isseks. Defendants' Exhibit M was offered with the understanding that we could check it. We have not finished our check and we have a few corrections, and then we have the problem about some figures as to volume of business.

The Court. Have you gentlemen exchanged views on that subject?

Mr. Lehrich. We need more time on that.

The Court. Then it will wait until Monday.

1104 Mr. Lehrich. I do not know whether Monday will be sufficient. I have made an inquiry, and this will be included with the rest of the matters.

Mr. Isseks. We have called upon counsel to produce various figures and yesterday Mr. Seymour said he would produce figures on Ray-Ban. We have asked for other matters. Suppose I give a list of those things we have requested to counsel over the week end.

The Court. I think that would be a good idea.

Mr. Lehrich. That is a list of material already requested.

The Court. Yes, just a memorandum so you can check among yourselves. While you are finished with your case I am not recording the fact that you are resting, because I will not until after the stipulation is reduced to writing. I will abide the event in order

to make sure. I like to adhere to the statement that a party has rested once he has made it. On Monday then, depending upon your stipulation, the defendants will make their motions.

Mr. Isseks. Do I understand we will go ahead on Monday?

The Court. I am not passing on the motion now. I am not passing on it until Monday.

1104–A Mr. Isseks. If we can, the Government would like to know who some of the witnesses are in advance.

The Court. If they want to tell you, they are at liberty to do so. They are not obliged to do so.

Mr. Isseks. I understand.

(Government's Exhibit 155 for identification received in evidence.)

(Adjourned to Monday, September 29, 1941, at 10:30 a. m.)

1105 UNITED STATES OF AMERICA

vs.

BAUSCH & LOMB OPTICAL COMPANY, ET AL.

NEW YORK, *September 29, 1941,*
10:30 a. m.

(Trial resumed.)

Mr. Isseks. Your Honor, it was not until a few minutes ago that we got together on the form of the stipulation. It is our thought that unless your Honor objects to reading the stipulation into the record, including the subject matter stipulated, that would be best, and then substitute a document which will be in the final form of the stipulation. If you think that will take too long, we are willing to mark the piece of paper which I have in my hand.

The Court. And substitute a clean copy?

Mr. Seymour. We can have it ready within an hour. We have a few pencil changes.

The Court. What would be the point of reading it into the record?

Mr. Isseks. There would not be any except to make the record complete.

The Court. Would not the written document make it complete?

1106 Mr. Isseks. We could mark this one but it has hieroglyphics on it which maybe some people could not read.

The Court. I have no objection to having that written into the record. Why can't you just hand it to the stenographer and have him spread it out on the record.

Mr. Isseks. Then I will give him this and later he can come to me and ask how it should read.

The COURT. Perhaps you want me to see it before you make your motion.

Mr. SEYMOUR. I think the proper thing to do, due to the fact that we have so many changes in it, is to have a clean copy run off or else have this marked.

Mr. ISSEKS. Let us have this marked.

Mr. SEYMOUR. Have this one marked and then substitute a clean copy for it.

The COURT. Very well.

Mr. ISSEKS. In this case I think I would like to have it appear in the record as the next Government's exhibit.

(Marked "Government's Exhibit 206.")

Mr. ISSEKS. On the question you raised yesterday, your Honor, I have a memorandum on the question of volume of business as to any effect on the question of restraint of trade.

1107 The COURT. Have you given a copy to your adversary?

Mr. ISSEKS. Yes, sir; both sides.

Mr. SEYMOUR. I want to say with respect to that stipulation, your Honor, that we have agreed that as to one feature of the language on which your Honor's approval would be appropriate if your Honor approves, and that is with respect to reference to this stipulation in the event that your Honor should find occasion to rely on it in disposing of the case.

The COURT. What paragraph are you referring to?

Mr. SEYMOUR. The paragraph on the bottom of the first page and I think both counsel would ask your Honor to approve the form of the stipulation.

The COURT. Paragraph 2?

Mr. SEYMOUR. Paragraph 2. It is really just the last two lines in that paragraph.

The COURT. Where you say "the conditions contained herein," you mean the conditions of paragraph 2?

Mr. SEYMOUR. Yes.

The COURT. I have no objection to that.

Mr. ISSEKS. Now, your Honor, we had a problem up on this stipulation of the total percentage of Soft-Lite's business as compared to other rose-tinted lenses. We have not heard from counsel as to whether the figures we furnished them are satisfactory

1108 or whether they want us to give them further information or try to get it, and I would like to know what they think about it.

Mr. LEHRICH. On that question, if your Honor please, I think I indicated on Friday that I was spot-checking with one company and I would have those figures available from the one company on Tuesday, that is tomorrow, and from those figures I think I could be apprised as to whether the total figures Mr.

Isseks has furnished are fairly accurate, but until tomorrow I do not think I could answer that question.

Mr. Isseks. We intend to offer that, and if we can, then rest in a short period of time. With that understanding I am perfectly willing to rest.

The Court. Suppose we have it understood that you may, in the event you cannot stipulate that fact, reopen your side of the case for the purpose of offering proof on it.

Mr. Isseks. Thank you very much, sir.

There was a Defendants' Exhibit M, which is a purported summary of the reasons why the retail licenses were cancelled. My associates are still checking. There is a little confusion. We have not completed it and that check will continue and we can still go along subject to correction.

1109 Mr. Lehrich. In that connection I want to say, Mr. Isseks, we checked too, and there are some corrections that I thought we ought to get together on.

Mr. Isseks. I think Mr. James and Mr. Lehrich or somebody ought to get together and work it out. While defendants were cross-examining Mr. Singer they referred to certain Fair Trade Act contracts, and we would like to have the record show what the exact situation is. You remember I said I did not insist on bringing the contracts, but we would like to have a summary.

Mr. Lehrich. In that connection, I prepared a list showing all the States in which we have the Fair Trade contracts, the names of the jobbers who have signed them and also a list of those who have not signed. I was going to offer that in conjunction with Exhibit S, which is a summary of Fair Trade contracts.

Mr. Isseks. All right, let us have it marked S–1.

The Court. Without objection, it will be received.

(Marked "Defendants' Exhibit S–1.")

1110 Mr. Isseks. Your Honor, I inadvertently failed to ask Mr. Singer a question, but I think counsel will undoubtedly stipulate it. We understand the facts to be that Soft-Lite Lens Company does not have a license from Bausch & Lomb in connection with Nokrome; and that Soft-Lite does no have a license from Panoptik in connection with Panoptik Soft-Lite. If our understanding is correct I would like a stipulation of that fact.

The Court. You mean a formal license?

Mr. Isseks. A formal license, just as the other companies have, in connection with which we have offered proof.

Mr. Lehrich. I think that statement is correct with respect to both patents covering the Panoptik and Nokrome.

Mr. Seymour. Subject to its relevancy and materiality and to correction, I am prepared to stipulate that.

Mr. Isseks. Thank you. Your Honor, except for the two things, the stipulation on percentage of business and checking Defendants' Exhibit M, the Government rests.

The Court. Mr. Lehrich, and Mr. Seymour, have you any motions you would like to make?

Mr. Seymour. If your Honor pleases, on behalf of my
1111 clients I move to dismiss the complaint, and move to strike the evidence which you have received subject to connection and over various objections continuing and otherwise. And I should say to your Honor before saying more about that motion, that so far as my clients are concerned we are satisfied that there has been no case made out of conspiracy, or on any of the other allegations, and that therefore we propose to rest.

Therefore I suggest to your Honor that in the interest of saving time now on oral argument, and in the interest of having the matter presented in the most satisfactory form, your Honor might reserve decision on the motion to dismiss and on the motion to strike, and thereupon we will rest and move to renew the motions, and then the motions can be the subject matter among other matters of the briefing and argument in the case.

Mr. Isseks. To which I heartily consent, your Honor, assuming Mr. Lehrich is not going to put in a defense.

The Court. I am dealing now only with Mr. Seymour's clients, Bausch & Lomb Optical Company, M. Herbert Eisenhart and Ben A. Ramaker and Joseph F. Taylor.

Mr. Seymour. That is correct, and as to those we move to dismiss and move to strike.

The Court. With respect to both of your motions the decision is reserved.

1112 Mr. Seymour. Those defendants now rest and renew their motions to dismiss and to strike, and for judgment in their favor, and I assume your Honor will reserve decision on those motions as well.

The Court. Correct.

Mr. Lehrich. The first motion I would like to make, if your Honor please, is to dismiss with respect to the defendant Morris Singer, concerning whom there has been no evidence in this case either oral or written, or of any kind or nature.

The Court. Do you want to state all of your motions, or do you want to have a disposition of each one individually?

Mr. Lehrich. Whichever your Honor wishes.

The Court. I would rather you proceed with all of your motions because I assume that Mr. Isseks may want to be heard on them.

Mr. Lehrich. I move to dismiss with respect to all the other defendants—Nathaniel Singer, Soft-Lite Lens Company, Inc., and

R. G. Landis, on the ground the Government has failed to make out a case, failed to prove the allegations of the complaint, that there is no proof of conspiracy in this case, and that the proof with respect to our distribution system does not constitute a violation of the Sherman Act.

1113 The COURT. With respect to Morris Singer, the decision is reserved. With respect to Soft-Lite Lens Company, Nathaniel Singer, and R. G. Landis, the motion is denied.

Mr. LEHRICH. I failed to incorporate in that application a motion to strike all of the testimony which was received subject to connection.

The COURT. Very well.

Mr. LEHRICH. The defendant Soft-Lite Lens Company and the other individual defendants rest, and we renew our motion to dismiss on the entire case, and ask your Honor to reserve decision on that motion.

The COURT. Very well.

Mr. ISSEKS. Your Honor, I would like to suggest that your Honor fix a time for the filing of briefs by both sides.

(Discussion of counsel, by consent not reported.)

The COURT. Exchange the main briefs on the 20th of October, exchange reply briefs on the 27th of October. We will have the argument on the 1st of November at 10:30 a. m. in chambers. The matter will be adjourned now until the date indicated.

(Adjourned to Saturday, November 1, 1941, at 10:30 a. m.)

1105 *Exhibit 1*

BAUSCH & LOMB OPTICAL CO.

NOTIFICATION

Subject Arrangement With Optical Service Corp. Covering the Use of Their Soft-Lite Glass.

To Optical Service Corp., Rochester, N. Y. (Date) 6-11-24.

The following is an outline of our special arrangement with the Optical Service Corporation of New York City on their Soft-Lite Glass.

We will surface Meniscus and Toric lenses from their Soft-Lite glass on stock orders which they will place with us from time to time, in quantities of not less than 20 pair of a focus in convex and 10 pair in concave powers.

They will furnish us the Soft-Lite glass in the rough, in sizes and gram weights required by our Pressing Department and

assume the normal loses in the preparation of the glass, as well as in the pressing and grinding operations.

After grinding, the lenses are inspected under our regular standards and divided into first and second selections. The first selection are placed into rose colored envelopes of special design, banded, and packed in B boxes, also of special design. The bands are of the rose colored tint and the boxes white with the rose colored front label. The second selection are placed into plain white envelopes and boxes with kind and focus number stamped on them. The rejects are wrapped in plain white paper with no marking and placed in inexpensive packing boxes.

The first and second selection lenses are charged at our regular Centex and Celex list prices less 33⅓ and 10%, the extra 10% covering the cost of the glass for which no invoice will be rendered by them.

They will fill all orders from their stock, from jobbers and retail licensees on their lists, copies of which are attached. Any orders which may come to us from the trade will be forwarded to the Optical Service Corporation for attention.

All Soft-Lite Glass blanks, of any thickness, will be charged at the 3 mm prices.

They are also entitled to buy other Ophthalmic Lens Products at regular jobbers prices. Regular Rx jobs of Soft-Lite glass at regular Rx prices.

We will also make Kryptoks, semi-finished and finished. The latter on Rx orders only.

1106 Orders received from Kryptok Jobbers and Special Jobbers direct will be shipped to customer direct, accompanied by the usual SA, but will be billed to the Optical Service Corporation at the regular prices for white Kryptoks less 25% discount, and less an allowance of $.30 per pair net for the glass.

We will also make Punktal lenses from Soft-Lite glass on prescription orders. These prescription jobs will be charged to the Optical Service Corporation at 33⅓ and 10%, if customer is not on the Punktal maximum discount list and 33⅓, 25, and 10%, if customer is on the maximum Punktal discount list.

Punktal Kryptoks will be billed to the Optical Service Corporation by taking the price of the Kryptok finished lens, as outlined above, as a basis, adding thereto the Punktal white prices, less the Punktal discount to which the customer is entitled, but in such cases the extra 10% does not apply as the cost of the glass is taken care of by the $.30 per pair allowance in the Kryptok figures.

The following is an example for a sphero cylinder combination, if customer is on the Punktal maximum discount list.

Semifinished Kryptok		$4.50
25%		1.12
		3.38
Surfacing second side	$2.10	
33⅓%	.70	
		1.40
		4.78
Allowance for glass		.30
		4.48
Punktal curve	3.50	
33⅓%	1.17	
	2.33	
25%	.58	
		1.75
		6.23

Our regular terms of payment apply in all cases.

BAUSCH & LOMB OPTICAL COMPANY.

1107 *Exhibit 1-A*

BAUSCH & LOMB OPTICAL CO.

NOTIFICATION

Subject: Arrangement with Optical Service Corp. covering the use of their Soft-Lite glass.

To: Optical Service Corp., Rochester, N. Y. (Date) 5-11-24.

The following is an outline of our special arrangement with the Optical Service Corporation of New York City on their Soft-Lite Glass.

We will surface Meniscus and Toric lenses from their Soft-Lite glass on stock orders which they will place with us from time to time, in quantities of not less than 20 pair of a focus in convex and 10 pair in concave powers.

They will furnish us the Soft-Lite glass in the rough, in sizes and gram weights required by our Pressing Department and assume the normal losses in the preparation of the glass, as well as in the pressing and grinding operations.

After grinding, the lenses are inspected under our regular standards and divided into first and second selections. The first selection are placed into rose colored envelopes of special design, banded, and packed in B boxes, also of special design. The bands are of the rose colored tint and the boxes white with the rose colored front label. The second selection are placed into plain white envelopes and boxes with kind and focus number stamped

on them. The rejects are wrapped in plain white paper with no marking and placed in inexpensive packing boxes.

The first and second selection lenses are charged at our regular Centex and Celex list prices less 33⅓ and 10%, the extra 10% covering the cost of the glass for which no invoice will be rendered by them.

They will fill all orders from their stock, from jobbers and retail licensees on their lists, copies of which are attached. Any orders which may come to us from the trade will be forwarded to the Optical Service Corporation for attention.

All Soft-Lite Glass blanks, of any thickness, will be charged at the 3-mm prices.

They are also entitled to buy other Ophthalmic Lens Products at regular jobbers prices. Regular Rx jobs of Soft-Lite glass at regular Rx prices.

We will also make Kryptoks, semi-finished and finished. The latter on Rx orders only.

1108 Orders received from Kryptok Jobbers and Special Jobbers direct will be shipped to customer direct, accompanied by the usual SA, but will be billed to the Optical Service Corpo ation, at the regular prices for white Kryptoks less 25% discount, and less an allowance of $.30 per pair net for the glass.

We will also make Punktal lenses from Soft-Lite glass on prescription orders. These prescription jobs will be charged to the Optical Service Corporation at 33⅓ and 10%, if customer is not on the Punktal maximum discount list and 33⅓, 25 and 10%, if customer is on the maximum Punktal discount list.

Punktal Kryptoks will be billed to the Optical Service Corporation by taking the price of the Kryptok finished lens, as outlined above, as a basis, adding thereto the Punktal white prices, less the Punktal discount to which the customer is entitled, but in such cases the extra 10% does not apply as the cost of the glass is taken care of by the $.30 per pair allowance in the Kryptok figures.

The following is an example for a sphero cylinder combination, if customer is on the Punktal maximum discount list.

Semifinished Kryptok		$4.50
25%		1.12
		3.38
Surfacing second side	2.10	
33⅓%	.70	
		1.40
		4.78
Allowance for glass		.30
		4.48

Punktal curve	$3.50	
33⅓%	1.17	
	2.33	
25%	1.58	
		$1.75
		$6.23

Our regular terms of payment apply in all cases.

BAUSCH & LOMB OPTICAL COMPANY.

ADB:DB.

1109 LIST OF SERVICE OPTICAL CORPORATION CUSTOMERS

Associated Optical Company, 278 Post Street, San Francisco, Calif.

Associated Optical Company, 640 So. Broadway, Los Angeles, Calif.

Associated Optical Company, 601–4 Mills Bldg., El Paso, Texas.

Austin B. Belgard, 5 S. Wabash Ave., Chicago, Ill.

N. P. Benson Optical Co., Syndicate Bldg., Minneapolis, Minn.

Bopp & Morgenstern, 1050 Broadway, Brooklyn, N. Y.

Richard Brown, Inc., 785 Broad St., Newark, N. J.

Central Optical Company, 5 S. Wabash Ave., Chicago, Ill.

Clinton Optical Company, 30–32 South Ave., Rochester, N. Y.

Dalton-Webb Opt. Co., 315 Superior St., Toledo, Ohio.

Diamond Optical Co., 99 Collier Street, Binghamton, N. Y.

Dow Optical Company, 30 N. Michigan Ave., Chicago, Ill.

Fort Wayne Optical Co., 108 W. Jefferson St., Fort Wayne, Ind.

Arthur Frank & Co., 71 Nassau Street, New York City

Louis Friedlander, Inc., 62 John Street, New York City

Joseph Grieff, 857 Willoughby Ave., Brooklyn, N. Y.

Hope Optical Company, 63 Washington St., Providence, R. I.

Houchin Optical Co., 881 Broad Street, Newark, N. J.

Imperial Optical Co., 21 East Douglas St., Toronto, Ont., Canada.

Kalamazoo Optical Co., 115 West Main St., Kalamazoo, Mich.

Kentucky Optical Co., Francis Bldg., Louisville, Ky.

F. W. King Optical Co., Euclid Arcade, Cleveland, Ohio.

King & Eisele Company, Franklin & Huron Sts., Buffalo, N. Y.

Kirstein Optical Co. Inc., Andrew & Water Sts., Rochester, N. Y.

Leff & Sussman, 2927 Third Avenue, New York City.

McIntire, Magee & Brown Co., 723 Sansom Street, Philadelphia, Pa.

Michaels Optical Company, 11 West 46th Street, New York City.

Milwaukee Optical Mfg. Co., 424 Jackson Street, Milwaukee, Wis.
R. Mohr & Sons, 883 Mission Street, San Francisco, Cal.
August Neuse, 33 West 125th St., New York City.
Niagara Optical Company, 534 Main Street, Buffalo, N. Y.
Norton Optical Company, 1016 Walnut Street, Kansas City, Mo.
Potter & Schnackenberg, 19 West 36th Street, New York City.
Quimby Optical Company, 373 Washington St., Boston, Mass.
E. W. Reynolds Co., Broadway & 5th St., Los Angeles, Cal.
Riggs Optical Company, Oklahoma City, Okla.
Riggs Optical Company, Old Nat'l Bank Bldg., Spokane, Wash.
Riggs Optical Company, Woolworth Bldg., Omaha, Nebr.
Riggs Optical Company, Rialto Bldg., Seattle, Wash.
Riggs Optical Company, Flood Bldg., San Francisco, Cal.
Riggs Optical Company, Pittock Block, Portland, Ore.
Riggs Optical Company, 1522 Glenarm St., Denver, Colo.
Riggs Optical Company, Great Falls, Mont.
Riggs Optical Company, 7th Floor Bellin Bldg., Green Bay, Wis.
Riggs Optical Company, 5th Flr. Title & Trust Bldg., Kansas City, Mo.
Riggs Optical Company, 336 South Broadway, Los Angeles, Cal.
Riggs Optical Company, Ryan Bldg., St. Paul, Minn.
Schmidt & Seidel, Inc., 125 East 23rd St., New York City.
Schulte Optical Company, Detroit, Mich.
Silbert-Keener Optical Co., 47 West Huron St., Buffalo, N. Y.
T. H. Smedley & Son, 920–922 Broadway, Camden, N. J.
M. E. Stern, 71 Nassau Street, New York City.
Uhlemann Optical Company, Wabash Ave. & Madison St., Chicago, Ill.
1110 Utica Optical Corp., 14 Devereux Street, Utica, N. Y.
White-Haines Optical Co., 305 Rhodes Bldg., Atlanta, Ga.
White-Haines Optical Co., 514 Market St., Pittsburg, Pa.
White-Haines Optical Co., Hume-Mansur Bldg., Indianapolis, Ind.
White-Haines Optical Co., 111–117 E. Long St., Columbus O.
Woolf Optical Company, 516 Fifth Avenue, New York City.
Winchester Optical Co., Horseheads, N. Y.
Walman Optical Company, 9th & Nicollet Ave., Minneapolis, Minn.
Western Optical Company, 306 Kearns Bldg., Salt Lake City, Utah.
Wolverine Optical Company, Stevens Bldg., Detroit, Mich.

F. Zadek & Bro., 142 Fulton Street, New York City.
Geneva Optical Company (and all branches), 60 West Superior Street, Chicago, Ill.

1110-A *Exhibit 1-B*

RETAIL LICENSEES

Arthur McDougall & Co., Chicago, Ill.
A. S. Aloe & Co., 513 Olive St., St. Louis, Mo.
W. N. Benedict & Co., 30 West 7th St., Cincinnati, O.
Hugo Bermann, 13 Exchange St., Jersey City, N. J.
Bowen & King, 405 North Charles St., Baltimore, Md.
E. E. Browne Opt. Co., Cleveland, Ohio.
Buffalo Optical Company, 574 Main Street, Buffalo, N. Y.
A. E. Covelle Co., Boston, Mass.
D. Harry Chambers, Baltimore, Md.
Almer Coe & Co., 105 N. Wabash Ave., Chicago, Ill.
Detmers Optical Co., 725 South Hill St., Los Angeles, Calif.
V. B. Dixson, Chicago, Ill.
T. Eaton & Co., Toronto, Ont., Canada.
F. H. Edmonds, 915 15th St., Washington, D. C.
Edwin H. Etz, 1217 G Street NW., Washington, D. C.
Freund Brothers, 1006 Pacific Avenue, Atlantic City.
Gall & Lembke, 7 East 48th Street, New York City.
P. A. Hoeret, 11 Taylor Arcade, Cleveland, Ohio.
E. Hommel & Sons, 531 University Block, Syracuse, N. Y.
Ben V. Smith, 50 N. Pearl St., Albany, N. Y.
Harvey & Lewis Co., 861 Chapel St., New Haven, Conn.
G. L. Hall Optical Company, 257 Granby St., Norfolk, Va.
Hoose Optical Company, Billings, Mont.
T. J. Howe & Company, Louisville, Ky.
B. M. Levoy, 137 West 42nd St., New York City.
Montgomery-Frost Company, 40 Bromfield St., Boston, Mass.
Linz Brothers, Dallas, Texas.
Miller, Inc., 406 W. Grand River Ave., Detroit, Mich.
T. H. Maguire, New York City.
Julius Lando, E. Water St., Milwaukee, Wis.
Pettis Drygoods Co., Indianapolis, Ind.
Wessels, Optometrists, Memphis, Texas.
J. H. Penny, Brooklyn, N. Y.
L. M. Prince Co., 108 West 4th Street, Cincinnati, Ohio.
Scadrons', 162 West 116th St., New York City.
Strong-Kennard Co., 2044 East Ninth St., Cleveland, O.
Scadrsos', 402 Grand Street, New York City.
George A. Squires, Cleveland, O.

Street Linder & Propert, Philadelphia, Pa.
John F. Wooster & Co., 234 Stockton St., San Francisco, Cal.
Watry & Heidkamp, 17 W. Randolph St., Chicago, Ill.
Arthur F. Williams, 59 E. 5th Street, St. Paul, Minn.
Kohler & Company, 426 Walnut Street, Cincinnati, O.

1111 *Exhibit 2*

BAUSCH & LOMB OPTICAL CO.

ROCHESTER, *July 30, 1924.*

In reply refer to JH: DB.

MR. NAT SINGER,
Optical Service Corporation,
Knickerbocker Bldg., Times Square, New York City.

DEAR NAT: I duly received your letter of the 24th instant.

We are pleased to inform you that we have decided to manufacture the Soft-Lite Glass. Now that no further obstacle presents itself, we shall be pleased to proceed quickly in the production of this glass but, as you undoubtedly know, we are in our vacation period and operations will not be resumed until August 4th. At that time the matter will be taken up for immediate consideration.

It might be desirable if you could arrange to come to Rochester and spend a day with us in order that we may proceed intelligently and that we both understand each other thoroughly. I plan leaving on my vacation on the 8th instant so would prefer if you could arrange to come to Rochester the early part of next week; either Tuesday or Wednesday would be perfectly agreeable.

With kind regards,
Yours very truly,

BAUSCH & LOMB OPTICAL COMPANY.
J. HAMMELE.

1112 *Exhibit 2-A*

MEMO OF CONVERSATION WITH MR. NAT SINGER IN REGARD TO SOFT-LITE LENSES, AND PRICE, ALSO MANNER, IN WHICH THEY WILL BE SUPPLIED TO HIM BY US

We agreed that the proper treatment of this matter, although we are going to manufacture the glass, would be to supply them on the same basis as Crookes. In other words we would take the Crookes Price list as our guide and from prices therein indicated extend a discount of 33⅓ and 10% and 2% for cash. The above exempts Meniscus rough on which a discount of 33⅓ and 20% will be extended.

Those lenses, after inspection, which do not come up to our standard of quality, we will treat in the same manner as we do our Celex and on these lenses a discount of 33⅓ and 50% will be extended.

The first quality lenses in envelopes as heretofore, and second quality in plain envelopes as now furnished.

They will place with us an initial order for a quantity which will serve their requirements for a three months' period; two months after initial order try to place a new order for the following three months' period.

The accumulation of second quality lenses to be sent them at the end of each three months' period. Any lenses not sufficiently good for second quality and which might be sufficiently good for sample purposes will be given them without charge.

On Kryptoks an additional charge of $1.50 per pair will be made with a discount of 25%.

On Punktal Soft-Lite a discount of 33⅓ and 25% with an additional charge of $1.00 for color.

Make no shipments after the 25th of the month excepting specials or telegraph orders.

They estimate that their minimum annual requirements will be 50,000 pairs.

It is understood that we make the above Soft-Lite Glass for them only. It is also understood that this arrangement is made between us and the Optical Service Corporation of New York only.

BAUSCH & LOMB OPTICAL COMPANY.

1113

Exhibit 3

[Copy]

EB–DB.

SEPTEMBER 13, 1926.

MR. NAT SINGER
% Optical Service Corp.,
Knickerbocker Building,
Times Square, New York City.

DEAR NAT: I have given the matter of our manufacturing for you Soft-Lite Glass and lenses considerable thought.

Since the very beginning of our relations with you, in connection with this transaction, it has been understood that we would safeguard your interests in every way and it has never been our intention to make competition for you by either marketing a tinted lens of our own or producing similar tinted glass for other manufacturers and it is our intention to abide by this understanding.

On the other hand, however, it is difficult to foresee the progress of science in producing glass possessing better properties than is obtainable at the present time and in that event we feel certain that you would not in any way desire to impede our progress in that direction.

We hope that this may be sufficient guarantee to you that we do not wish to do anything that would look like competition in connection with the Soft-Lite and we naturally expect that your efforts in the sale of same will be continued as at present for an indefinite period unless by consent of both parties concerned a different arrangement is agreed upon.

Yours very truly,

BAUSCH & LOMB OPTICAL CO.

P. S.—Tinted lenses such as Crookes, Fieuzal, Smoke, Amber, etc., which we are now manufacturing, it is understood will not come under the above arrangement.

1114 *Exhibit 4*

[Copy]

OPTICAL SERVICE CORPORATION

NEW YORK, N. Y.

SEPTEMBER 16, 1926.

MR. EDWARD BAUSCH,
President, Bausch & Lomb Optical Company,
Rochester, New York.

GENTLEMEN: May we extend to you gentlemen our sincere appreciation for the assurances as outlined in your letter of September the Thirteenth.

Your cooperation of the past has been deeply appreciated. We shall depend upon your future cooperation as well, in striving towards the expansion of sales, the enhancement of which will be matually advantageous.

This letter from Bausch & Lomb coupled with your personal assurance, Mr. Bausch, makes us grateful to you as to your associates.

It will always be our privilege and pleasure, as it has been in the past, to serve your interests as well as our own.

The writer adds his personal heartfelt thanks, and appreciation for the confidence expressed in so many ways.

Respectfully yours,

OPTICAL SERVICE CORPORATION.

(Signed) NATHANIEL SINGER, *Pres.*

NS-WBN.

1115 *Exhibit 5*

[Copy]

JULY 6, 1932.

MR. NAT SINGER,
Soft-Lite Lens Company,
119 W. 57th Street, New York City.

MY DEAR NAT: Confirming our recent conversation held in your office in New York, I should be glad to state our position regarding your request in connection with our patent application for improvement in the manufacture of Soft-Lite Nokrome lenses.

Insofar as the marketing of product manufactured under this patent involves the use of Soft-Lite glass as such, we are willing to grant you the exclusive distribution under the same general conditions as we have agreed to in the letter written by our company to you under date of September 13, 1926. In this letter we assured you that we did not intend to market a tinted lens to make competition for you, but reserved the right to market directly a glass of the selective filtering type when, with the progress of science, there should be developed a satisfactory glass to meet such requirement.

This letter, we believe, is in accordance with the request which you made and we hope will meet the situation satisfactorily.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

MHE-MW.

1116 *Exhibit 6*

[Copy]

May 3, 1935.

To: Mr. Carl Bausch.
From: G. Husson.

Our agents in Mexico, Casa Calpini, will take on Soft-Lite Lenses. Since, however, the word "Soft-Lite" is 100% meaningless in Spanish, they have had registered the word "Sombral". I have agreed to supply them with Soft-Lite Lenses in containers marked "Sombral" instead of "Soft-Lite".

It is, therefore, requested that such containers be prepared to be used for the order of the Soft-Lite Lenses just received.

An important question in connection with these containers is whether the name "B&L" should appear or "Soft-Lite Lens Company". The agreement between B&L and Soft-Lite, under

which we are selling Soft-Lites abroad, recognized that second quality Soft-Lites are the property of B&L. I am inclined to the opinion that it would be correct to have the name "B&L" appear on the containers instead of "Soft-Lite".

Export Department.

GH: EL.
Copies to: O. Trautmann, P. Goldsmith.
Copied 5-7-35 by A. R. R.

1117 *Exhibit 7*

JUNE 22, 1936.

To: Mr. C. S. Hallauer.
From: G. Husson.

Tuesday afternoon, June 16, I spent at Soft-Lite Lens Co. of New York. The purpose of the visit was to hear what Ray Landis had to say and evolve some plan for future action before Nat Singer's departure the following day for Europe.

Since the Soft-Lite Lens Co. has its own organization for the sale of Soft-Lite lenses in Great Britain and on the Continent, we are no longer concerned with distribution. Ray Landis was, however, quite emphatic in his statement regarding the lack of cooperation on the part of our London organization. Most complaints, however, were of a personal nature excepting the statement regarding poor service on the part of B&L Ltd. Rx shop. This is being investigated.

Confidential reports of Mr. Ellis to me tell another story. The conclusion is inescapable that someone is distorting the truth in order to paint a picture that will lead B&L Rochester to take certain action. I am also convinced that Ray Landis and Nat Singer did not tell me all that has happened in London and I shall have interesting details to mention verbally when we discuss this matter.

The plan evolved was for Nat Singer to stay away from B&L Ltd. as much as possible and thereby avoid further misunderstanding and friction.

During the conference, Mr. Singer excused himself for a long distance call. When he returned, he informed me he had been talking with Mr. Eisenhart and that Mr. Eisenhart had agreed to the policy of authorizing Routit of Paris to manufacture lenses from the French Soft-Lite glass and call them "Soft-Lite" with the further identification in small letters "French formula." You will probably recollect that early last Fall at a conference here in Rochester and concluded in Mr. Eisenhart's office, it was
1118 decided that if Soft Lite Lens Co. had Soft-Lite lenses not of B&L glass but made elsewhere, B&L would discontinue the sale of Soft-Lite lenses as such, but would adopt another

name. The purpose of this policy was to prevent Routit from riding on the B&L reputation. Routit is one of the most unethical French manufacturers of spectacle lenses.

Nat Singer plans an agreement with Routit whereby the latter will manufacture Soft-Lite lenses in France and sell them on the Continent eventually eliminating B&L Soft-Lite lenses in Europe. Soft-Lite Ltd. of London will continue to sell B&L-made lenses in Great Britain. The plan of operation of Nat Singer is likely to have far reaching effects insofar as the export business of B&L is concerned, and unless the utmost caution and special precautions are taken, B&L's prestige will suffer abroad because of the apparent alliance with Routit.

I assured Nat Singer and Ray Landis that the question of prices for shell-run Soft-Lites would be discussed and established shortly after my return to Rochester. In connection with the establishing of these shell-run prices, there is an angle or aspect of the problem which deserves special attention, and that is the prices at which we lay Soft-Lite lenses down in our London Office. The British Customs continue to question the importation by B&L Ltd. of Soft-Lite lenses and the sale of these lenses to Soft-Lite Ltd. It is, therefore, of the utmost importance that we fully comply with the Price, Waterhouse setup of 1932 in connection with the pricing of merchandise to B&L Ltd.

G. HUSSON.

GH: EL.

1119 *Exhibit 8*

SEPTEMBER 8, 1938.

REPORT ON MEETING HELD IN DIRECTORS' ROOM, WEDNESDAY AT 3 P. M.

Present: Mr. Eisenhart, Mr. Carl Hallauer, Mr. Gordon Baird, Ben Ramaker, Eddie Reh, Ray Welch, G. Husson.

Subject: Stock of Celex Soft-Lite Lenses.

The rising stock of Celex Soft-Lite lenses prompted the meeting called by Mr. Eisenhart. On August 1, the stock of Celex Soft-Lite lenses amounted to 119,030 pairs. That stock was made up of the following:

Orthosin Soft-Lite, 12,349 pairs.
Celex Soft-Lite, 26,412 pairs.
Balsin Soft-Lite, 80,269 pairs.

The foregoing stock is the property of the Bausch & Lomb Optical Co., under an agreement in operation between the Com-

pany and Soft-Lite Lens Co., of New York. Under that agreement, Soft-Lite Lens Co. has a deciding voice in establishing the prices of Soft-Lite lenses sold abroad. The high price at which these lenses have to be sold is the true cause of the slow disposition of the stock that is accumulating in Rochester. The important question, therefore, is to find means to increase the sales volume to the point where the accumulated stock will be moved and fresh stock will be disposed of at about the same rate at which it comes from the factory.

Two ways were suggested: One, to reduce prices of Soft-Lite lenses abroad to the point where these lenses will be more in line with corresponding competitive lenses. A tentative schedule of these prices is submitted herewith. G. Husson is to contact the Soft-Lite Lens Co., especially Nat Singer, with the purpose of having him adopt that schedule.

In case an understanding cannot be reached with Soft-Lite Lens Co. with regard to the prices at which the various types of Soft-Lite lenses are to be sold abroad, then the possibility of selling such lenses under another name, entirely independently of Soft-Lite Lens Co., will be considered.

Every effort will be made by G. Husson to have this question solved within the next two months.

G. Husson: EH.

Copies to: Mr. Eisenhart, Mr. Carl Hallauer, Mr. Gordon Baird.

1120 *Exhibit 9*

Mr. Gordon Baird

REPORT ON SOFT-LITE MEETING

Time: September 23, 1938, 3:30 P. M.
Place: Director's Room.
Present: Carl Hallauer, Gordon Baird, Nat Singer, G. Husson.
Topics: A—Pricing of Soft-Lite lenses sold by Export Department. B—Nat Singer's review of his activities in Europe.

A—The rising inventory of Balsin Soft-Lite lenses prompted the reopening of the price issue. It is being considered as the cause for the slow movement of Soft-Lite lenses abroad. It was proposed and Mr. Singer agreed to a downward revision of Soft-Lite Celex and Balsin prices. The purpose of this downward revision is to establish the balance between white and Soft-Lite

that exists in the Orthosin series and also in the white Punktal and tinted Punktal of Zeiss.

G. Husson, in answer to the question about the new prices, suggested 75 cents per pair for the first group, Meniscus Celex and Balsin, less 33⅓% plus an additional discount of 10 or 15% for quantity purchased; quantity to be determined in accordance with the market conditions of the various countries. The foregoing was accepted as a working basis for the new prices which are to become effective at once.

B—Mr. Singer spoke about his activities while in Europe, especially Great Britain and France. In Great Britain an arrangement is now in existence between the Soft-Lite Lens Co., Ltd., on the one hand, and United Kingdom Optical Co., Ltd., also a similar arrangement with Max Wiseman. Under this agreement, flat Meniscus and Toric lenses will be made for Soft-Lite, Ltd., by the two named companies, United Kingdom Optical Co., Ltd., and M. Wiseman & Co., Ltd., out of Bausch & Lomb Soft-Lite glass. The glass for the present will be sent over in raw form, squares, unpressed and sold by weight.

Soft-Lite Kryptok will be made by Kryptok, Ltd., corrected lenses of Ultor type will be made and sold by Ultor, Ltd., and Soft-Lite Orthobal will be made in Rochester and sold by Bausch & Lomb Optical Co., Ltd. The manufacturer of Orthobal and Orthogon will not be authorized for Great Britain.

The parties to the foregoing agreements, agree not to supply directly or indirectly any pink or rose tint glass or lenses in the British Isles, U. S. A., or Canada.

Mr. Singer then made a review of the Soft-Lite price structure in Great Britain. Since that price structure in no way affects Bausch & Lomb, Ltd., it is omitted from this report. Mr. Singer reported that the sales quota of Soft-Lite Lenses for Great Britain in 1938 is 30,000 pairs, 1939 36,000 pairs, 1940 40,000 pairs.

1121 Mr. Nat Singer referred also to his agreement with Routtit regarding the disposition of French made Soft-Lite glass. Routtit is authorized to sell glass and blanks of French glass to the trade, except Great Britain, Australia, New Zealand, and South Africa. Such glass or blanks or lenses are not to be sold under the name of Soft-Lite.

———, ———,

Export Department.

G. Husson: GVH.

1122 *Exhibit 10*

SOFT-LITE LENS CO., INC.

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

SEPTEMBER 10, 1938.

Mr. GUS HUSSON,
Bausch & Lomb Optical Company,
Rochester, New York.

DEAR GUS: Have just been reviewing export matters with Miss Sieger. As a result I am enclosing herewith copies of two letters sent by our London company to M. Wiseman & Co., Ltd. and The United Kingdom Opt. Co. Ltd. covering the manufacture by them of Soft-Lite lenses from Bausch & Lomb made glass. Thought you might like to read these and keep them in your files.

I understand that there is some further correspondence which applies to these letters and as soon as these are available, I will have copies sent to you as well.

Kindest regards.

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: sk.
encs.

1123 *Exhibit 10–A*

CHS:WT.

10TH AUG. 1938.

THE UNITED KINGDOM OPT. CO. LTD.,
Mill Hill, N. W. 7.

Attention of Mr. Sherron.

GENTLEMEN: This is to confirm our understanding as finally reached recently covering the manufacturing of Soft-Lite lenses in Great Britain by your good selves, and we should like the following terms to be enforced for a period of one year, to be terminated if either of us desire, by giving an additional six months' notice.

We will confine all our British manufacturing of single vision lenses in flats and regular torics to your Company and to Messrs. M. Wisemen and Co. Ltd., and for all such bifocals forms and lenses as either of you are willing to manufacture for us and are able to manufacture satisfactorily.

We undertake not to import any flats or regular torics in uncut or semi-finished form after we have received deliveries of these forms from you and Messrs. Wiseman & Co. Ltd., we hope deliveries will be made as early as possible after receipt of the glass.

It is to be understood that the following special forms are to be made in Soft-Lite glass for us by other firms, namely, as follows:

Soft-Lite Kryptok to be made by Kryptok Ltd. for our sale.

Corrected lenses: Ultor to be made and sold by Ultor Ltd. Orthobal to be made and sold by the Bausch & Lomb Opt. Co. Ltd.

We will continue to import our present series of corrected lenses until such time as we find it expedient to have a line manufactured here.

The manufacturing of Soft-Lite glass, in which is incorporated the secret Soft-Lite formula, is confined exclusively to the glass made for the Soft-Lite Lens Company in the Rochester, New York, glass plant of the Bausch & Lomb Optical Company.

1124 It is agreed by yourselves and Messrs. M. Wiseman & Co. Ltd. that you will not supply, either directly or indirectly, any pink or rose tint glass or lenses in the U. S. A., the British Isles, or Canada. This is not to exclude your continuing to supply Univis tint bifocals to U. S. A. and Canada.

Your prices to us for single vision flats and regular torics are to be based on your current price-list, that is, Crookes prices less 33⅓% less 3/- and less 20% on all kinds except semi-finished meniscus and semi-finished torics, on which the final discount will be 25% instead of 20%. Would you kindly attach to your acknowledgment of this letter the resultant net prices.

There is a limited amount of Soft-Lite semi-finished bifocals that have been prepared for shipment this summer from the U. S. A. and that are for the use, primarily, of several multiple shop retailers. Other than these, and any special bifocal forms made in U. S. A. and not in Great Britain, we plan to import no Soft-Lite bifocals whatever. That applies to the Dualens as well, just as soon as we can have this lens made here satisfactorily. All Soft-Lite bifocals, then, are to be made hereafter in the British Isles. Univis and Solids are to be made by United Kingdom Opt. Co. Ltd., Kryptoks by Kryptok Ltd., and fused by M. Wiseman & Co. Ltd. Depending on relative total percentages of business placed with you and them we may divide the amount of fused business between you and them.

Prices for the making of Solids and Fused are to be those prevailing on quantity purchases by the wholesalers in white, we supplying the cut squares. We should appreciate receiving a list of these prices from you. Only first quality blanks are to be sup-

plied to us and those under that quality are not to be charged for, and the glass salvaged if possible for single vision lenses use.

As regards prices, it is understood that there is to be no increase to us for the period of this arrangement. As you know, we feel that it would be more logical, and certainly more in our interest, to have grinding prices based on white, and not at this particular time, on Crookes prices. However, we realize that there is a higher cost involved in grinding from someone else's glass at the beginning, and also in the necessity of grinding from blanks that are moulded from squares instead of from discs that are normally used here. We also realize that at the beginning the quantities in total and per focus will be limited. It is hoped, however, that we shall be able to build up a substantial volume of sales and thus increase our manufacturing orders accordingly. This possibility, coupled with the experience you will acquire in handling our glass may permit you to base your grinding prices for Soft-Lite on white prices instead of those for Crookes lenses when the subject of renewal is discussed at the end of the year. It is our plan, as you know, to pass along any saving we may effect in manufacturing costs. We believe that this should result in greater interest in Soft-Lite sales by our wholesalers, with a resultant increase in the volume of sales, and subsequently in the volume of our manufacturing orders.

Whereas we appreciate that the percentages you anticipate resulting from manufacture in single vision, namely, 60% firsts, 25% seconds and 15% spoilage or rejects are not guaranteed, it is agreed that is in our mutual best interests that these percentages be attained and that the first quality percentage be increased, while the poorer quality percentages be decreased. If after the first six months' deliveries the percentages fall below the above in first quality, we may have to ask for a revision in prices. This is due to the fact that our selling prices, barely sufficient to cover current overhead though based on a large percentage of increase over current sales, were based on the percentages noted above. So, if further losses would have to be absorbed due to lowered resultant qualities, either our selling prices, already rather high, might be increased, or our buying prices reduced. This is a matter which need not come up for some time, however.

1125

As regards the importation of the raw glass, it was finally decided that it would be best and simplest for us to order and import the glass direct. If by any chance Customs place any higher rate of duty than is now charged on other raw glass of similar type and colour, you and Messrs. Wiseman & Co. Ltd.

will put forth every endeavour to point out to Customs that actually the Rochester price for the glass is far higher than costs on other tinted glass purchased in Britain from Germany or France. The arrangement as now made, is to the best interests of British manufacture, for it means that practically all our lenses, formerly imported in the finished or semi-finished state from the U. S. A. will now be of almost entirely British manufacture. With the costs already higher than on competing glass, the successful introduction of this new British series in Soft-Lite precludes any higher rate of import costs for duties than prevails on other imported coloured glass.

Prices for the Univis Soft-Lite are awaited. We would suggest as in our mutual best interest a price for these as close to your prevailing white blank rates as expedient, so that we may in turn reduce our prices to our customers in order to increase the usage of this type of bifocal. Details of the sheet glass to be specially ordered for this bifocal are also awaited.

Yours very truly,

p. p. SOFT-LITE LENS COMPANY LIMITED.

——— ———, *Director.*

1126 *Exhibit 10–B*

CHS:WT

9TH AUG., 1938.

Messrs. M. WISEMAN & Co. LTD.,
72, Leather Lane, *London, E. C. 1.*
For the attention of Mr. M. Wiseman.

GENTLEMEN: This is to confirm our understanding as finally reached recently covering the manufacturing of Soft-Lite lenses in Great Britain by your goodselves, and we should like the following terms to be enforced for a period of one year, to be terminated if either of us desire, by giving an additional six months' notice.

We will confine all our British manufacturing of single vision lenses in flats and regular torics to your Company and to Messrs. United Kingdom Optical Company Limited, and for all such bifocal forms and lenses as either of your are willing to manufacture for us and are able to manufacture satisfactorily.

We undertake not to import any flats or regular torics in uncut or semi-finished form after we have received deliveries of these forms from you and the United Kingdom Optical Co. Ltd. We hope deliveries will be made as early as possible after receipt of the glass.

It is to be understood that the following special forms are to be made in Soft-Lite glass for us by other firms, namely as follows:

Soft-Lite Kryptok to be made by Kryptok Ltd. for our sale.
Corrected Lenses:
Ultor to be made and sold by Ultor Ltd.
Orthobal to be made and sold by Bausch & Lomb Opt. Co. Ltd.

We will continue to import our present series of corrected lenses until such time as we find it expedient to have a line manufactured here.

The manufacturing of Soft-Lite glass, in which is incorporated the secret Soft-Lite formula, is confined exclusively to the glass made for the Soft-Lite Lens Company in the Rochester, New York, glass plant of the Bausch & Lomb Optical Company. No glass may be used or offered as Soft-Lite unless it is of Rochester manufacture.

1127 It is agreed by yourselves and the United Kingdom Opt. Co. Ltd. that you will not supply, either directly or indirectly, any pink or rose tint glass or lenses in the British Isles, U. S. A. or Canada.

Your prices to us for single vision flats and regular torics are to be based on the current price-list of the United Kingdom Opt. Co. Ltd., that is, Crookes prices less 33⅓% less 3/– and less 20% on all kinds except semi-finished meniscus and semi-finished torics, on which the final discount will be 25% instead of 20%. Would you kindly attach to your acknowledgment of this letter the resultant nett prices.

There is a limited amount of Soft-Lite semi-finished bifocals that have been prepared for shipment this summer from the U. S. A. and that are for the use, primarily, of several multiple shop retailers. Other than these, and any special bifocal forms made in U. S. A. and not in Great Britain, we plan to import no Soft-Lite bifocals whatever. That applies to the Dualens as well, just as soon as we can have this lens made here satisfactorily.

All Soft-Lite bifocals, then, are to be made hereafter in the British Isles. Univis and Solide are to be made exclusively by United Kingdom, Kryptoks by Kryptok Ltd., and fused by M. Wiseman and Co. Ltd. Depending upon relative total percentages of business placed with you and them, we may divide the amount of fused business between you and them.

Prices for the making of Solids and Fused are to be those prevailing on quantity purchases by the wholesalers in white, we supplying the cut squares. We would appreciate receiving a list of these prices from you. Only first quality blanks are to be supplied

to us, and those under that quality are not to be charged for, and the glass salvaged if possible for single vision lenses use.

As regards prices, it is understood that there is to be no increase to us for the period of this arrangement. As your know, we feel that it would be more logical, and certainly more in our interest to have grinding prices based on white, and not, at this particular time, on Crookes prices. However, we realise that there is a higher cost involved in grinding from someone else's glass at the beginning and also in the necessity of grinding from blanks that are moulded from squares instead of from discs which are normally used here. We also realise that at the beginning, the quantities in total and per focus will be limited. It is hoped, however, that we shall be able to build up a substantial volume of sales and thus increase our manufacturing orders accordingly. This possibility, coupled with the experience you will acquire in handling our glass, may permit you to base your grinding prices for Soft-Lite on white prices instead of Crookes prices when the subject of renewal is discussed at the end of the year. It is our plan, as you know, to pass along any saving we may effect in manufacturing costs. We believe that this should result in greater interest in Soft-Lite sales by our wholesalers with a resultant increase in the volume of sales, and, subsequently, in the volume of manufacturing orders.

Whereas we appreciate that the percentages you anticipate resulting from manufacture in single vision, namely, 60% firsts, 25% seconds, and 15% spoilage or rejects are not guaranteed, it is agreed that is to our mutual best interests that these percentages be attained and that the first quality percentage be increased, while the poorer quality percentages be decreased. If after the first six months' deliveries the percentages fall below the above in first quality, we may have to ask for a revision of prices. This is due to the fact that our selling prices, barely sufficient to cover current overhead, though based on a large percentage of increase over current sales, were based on the percentages noted above. So, if further losses would have to be absorbed due to lowered resultant qualities, either our selling prices, already rather high, might be increased, or our buying prices reduced. This is a matter which need not come up for some time, however.

1128

As regards the importation of the raw glass, it was finally decided that it would be best and simplest for us to order and import the glass direct. If by any chance Customs place any higher rate of duty than is now charged on other raw glass of similar type and colour, you and the United Kingdom Opt. Co. Ltd. will put forth every endeavour to point out to Customs that actually the Rochester price for the glass is far higher than costs on other tinted glass

purchased in Britain from Germany or France. The arrangement as now made is to the best interests of British manufacture, for it means that practically all our lenses, formerly imported from the U. S. A. in the finished or semi-finished state, will now be of almost entirely British manufacture. With the costs already higher than on competing glass, the successful introduction of this new British series in Soft-Lite precludes any higher rate of import costs for duties than prevails on other imported coloured glass.

Yours very truly,

p.p. SOFT-LITE LENS COMPANY LIMITED.

1129 *Exhibit 11*

1130 *Exhibit 12*

MADISON, WIS., 1/21/27.

SIGNED APPLICATION FOR A SOFT-LITE LICENSEE PRIVILEGE

Subject to Acceptance by the Sole Owners of Soft-Lite Lenses, the Optical Service Corporation, Knickerbocker Building, Times Square, New York City.

The firm of H. H. Ratcliff Co., at Madison, Wis., a recognized high-grade ethical optical concern cognizant of the standards and principles upon which licenses for Soft-Lites are granted, hereby subscribes to these principles and to the fact that they have placed a signed order for the outright purchase of the minimum quantity requirements of Soft-Lite Lenses.

These requirements, namely, 100 pairs assorted foci Bausch & Lomb ground Soft-Lite Lenses, are to be filled as stock permits in accordance with the terms and conditions as mutually agreed.

Above certified to and endorsed by

Applicant H. H. Ratcliff Co. Address 29 So. Pinckney St. W. G. Ostertag.

1131 *Exhibit 13*

REGISTERED PROTECTION B–0114071 CERTIFICATE—SOFT-LITE LENSES

SOFT-LITE

These glasses are the property of

Name_____

Address_____

Phone No._____ Rx. No._____

These lenses are guaranteed to be genuine

SOFT-LITE LENSES

Signed_____ Date _____

1132 The lenses supplied for your prescription are genuine.

SOFT-LITE LENSES

Reg. U. S. Pat. Off.

Your eyesight examination indicates the need for neutral absorptive lenses. Therefore, Soft-Lite Lenses have been prescribed.

Soft-Lite Lenses scientifically reduce the quantity of light without disturbing true color perception. They provide more comfortable vision and blend inconspicuously with the complexion.

Should you find it necessary to duplicate your prescription when away from home, be sure that you receive genuine Soft-Lite Lenses. These are always identified by this Protection Certificate. This is important because, while many absorptive lenses are similar in appearance, they are substantially different in their transmissive properties.

A record of your prescription is on file. When you need a lens replacement, phone or come in and it will be made promptly.

This certificate must not be defaced nor any marks or numbers thereon obliterated.

1134 *Exhibit 15*

OPTICAL SERVICE CORPORATION

Soft-Lite and Thin-Lite Lenses

119 WEST 57TH STREET, NEW YORK

OCTOBER 31, 1927.

Re Revised Discounts

Distributors and Class "A" Wholesalers:

GENTLEMEN: Because of the new lowered list prices on Duo-Sites and Soft-Lite Kryptoks and the revised billing arrangements on Punktal Soft-Lites, it has been necessary to change the discounts to Distributors. Below are the discounts now in effect:

	Distributors	Class "A" wholesalers	Licensees
Punktal Soft-Lite Light Shade stock lenses	20% & 33⅓%	20% & 25%	20%
Punktal Soft-Lite Dark & Sport Shades & Rx lenses	33⅓%	20%	6%
Duo-Sites & Soft-Lite Kryptoks (3 shades)	20% & 33⅓%	20% & 25%	20%
Prescription Lenses ordered from B&L	20%	20%	

Soft-Lite prescription lenses are always billed to retailers, either Licensees or Non-Licensees at the prescription cash discount only.

Your margin of profit on Soft-Lites remains unchanged and is greater than on any other lens that you sell. Therefore, it pays you to put real selling effort behind them.

With best wishes, we are

Very truy yours,

OPTICAL SERVICE CORPORATION.

RGL: HB.

1135 *Exhibit 16*

[Copy]

Tel.: Jefferson 3-7280, 7281.

BUSHWICK OPTICAL CO., INC.

Wholesale Opticians, Specialists in Prescription Work

1108 DE KALB AVENUE

BROOKLYN, N. Y., *April 18th, 1935.*

SOFT-LITE LENS COMPANY,
119 W. 57th Street, New York, N. Y.

GENTLEMEN: We would like to be put on your list as distributors of your SOFT-LITE lenses.

Kindly advise us as to the necessary requirements for the above.

Very truly yours.

BUSHWICK OPTICAL CO., INC.

mk: swa.

1136 *Exhibit 17*

[Copy]

SOFT-LITE LENS CO., INC.

Like Cathedral Windows Soft-Lites Soften the Light

119 WEST 57TH STREET, NEW YORK CITY

APRIL 24, 1935.

BUSHWICK OPTICAL COMPANY,
1108 De Kalb Avenue,
Brooklyn, New York.

GENTLEMEN: Thank you for your request of April 18th to add your name to our distributors' list.

At the present time our wholesale distribution in Greater New York is complete and we are therefore unable to consider your

application for a wholesaler's license. Thanks again for your inquiry.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.
(Signed) DONALD STEERS.

D. Steers: FR.

1137 *Exhibit 18*

MARCH 18, 1938.

AMERICAN OPTICAL COMPANY,
E. W. Reynolds Division,
Metropolitan Building, Los Angeles, California.

GENTLEMEN: We have your letter of March 8th containing instructions regarding the form in which invoices are to be made out after March 1st.

Inasmuch as the E. W. Reynolds Company has been acquired by the American Optical Company, they have, of course, been automatically removed from the list of Soft-Lite Wholesale Distributors. So that, in the future, it is not possible to supply you with Soft-Lite Lenses in any form with the exception of Panoptik Soft-Lite Bifocals.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

A. F. Immig: AS.

1138 *Exhibit 19*

JANUARY 13, 1939.

To: Mr. LEO SCHLEMMER.
From: LENS SALES DEPARTMENT.

Supplementing notification of April 11, 1938, please note that instructions issued on the above date to the effect that no orders for Soft-Lite single vision lenses or blanks of any form should be accepted from the following firms:

American Optical Co., Southbridge, and all branches.
E. W. Reynolds, Los Angeles, California.
R. Mohr & Sons, San Francisco, California.

should include also double vision lenses of any kind except Panoptik Soft-Lite bifocals.

ADBuedingen: MC

Copies to: Billing Department, Tabulating Dept., Cost Department, Credit Department.

CC: Helen Behrndt, Edith Herring.

1139 *Exhibit 20*

SOFT-LITE LENS CO., INC.
Squibbs Building, 745 Fifth Avenue
NEW YORK CITY

JANUARY 29, 1940.

ROYAL OPT.CAL CO.
1225 Raymond Boulevard, Newark, New Jersey.

Attention Mr. Carl Haberstroh

DEAR MR. HABERSTROH: We wish to thank you for your inquiry dated January 25th.

We regret to advise that our distribution at the present time is complete in the territory which you serve and we cannot, therefore, add your company to our list of Distributors.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS,

R. G. Landis: lck.

1140 *Exhibit 21*

MAY 3, 1939.

Mr. A. R. FENNIMORE,
California Optical Co., 130 Maiden Lane, San Francisco, California.

DEAR ARTHUR: Thank you very much for your letter of April 28th in which you confirm the report regarding the sale of the wholesale division of your company to the American Optical Company.

Naturally, in view of this, it is necessary for us to discontinue the listing of the California Optical Company as a Soft-Lite Distributor.

We are, however, classifying your retail establishment as retail Stock Licensees under which it will be possible to continue the purchase and sale of Soft-Lite Lenses to the consumer in your retail establishments, as usual. On this basis, you will in future, purchase your Soft-Lite requirements from a Soft-Lite Distributor, from the enclosed retail Stock Licensee price list.

Incidentally, will your retail establishment continue to operate under the name of the California Optical Company?

With kindest personal regards,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

1141 *Exhibit 22*

MAY 3, 1939.

RIGGS OPTICAL COMPANY,
Flood Building, San Francisco, Calif.

GENTLEMEN: Please be advised that since the sale by the California Optical Company of their wholesale business to the American Optical Company, which we understand became effective May 1st, the listing of the California Optical Company as Soft-Lite Distributors has been terminated.

We are listing the retail establishments of the California Optical Company as Soft-Lite retail Stock Licensees, under which classification they will, in future, purchase their Soft-Lite requirements from a Soft-Lite Distributor, at prices listed in the Soft-Lite retail Stock Licensee price lists.

Will you please change your records accordingly?

Your very truy,

SOFT-LITE LENS COMPANY, INC.

AFImmig/D.

1142 *Exhibit 23*

FEBRUARY 16, 1934.

BARNETT & RAMEL OPTICAL COMPANY, INC.,
Frisco Building, Joplin, Missouri.

GENTLEMEN: Please refer to your orders #F04, #F05 and #F07. Inasmuch as your firm is no longer a Wholesale Licensee, we shall be unable to fill these orders. We are therefore cancelling them.

Your very truy,

SOFT-LITE LENS COMPANY, INC.

GBH:H

1143 *Exhibit 24*

FEBRUARY 20, 1934.

BARNETT & RAMEL OPTICAL COMPANY,
Bryant Building, Kansas City, Missouri.

GENTLEMEN: This letter will serve as notification to you that the Soft-Lite retail license granted to you is hereby revoked.

We have taken this action because in our opinion you have not satisfactorily carried our your responsibilities as a Soft-Lite Licensee, and must as we regret it, we are left with no alternative.

Your very truy,

SOFT-LITE LENS COMPANY, INC.

GBH:DR.

1144 *Exhibit 24–A*

SOFT-LITE LENS CO., INC.
119 West 57th Street
NEW YORK CITY

FEBRUARY 20, 1934.

BARNETT & RAMEL OPTICAL COMPANY,
Bryant Building, Kansas City, Missouri.

GENTLEMEN: This letter will serve as notification to you that the Soft-Lite retail license granted to you is hereby revoked.

We have taken this action because in our opinion you have not satisfactorily carried out your responsibilities as a Soft-Lite Licensee, and much as we regret it, we are left with no alternative.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
G. B. HANNAFORD.

GBH: DR.

1145 *Exhibit 25*

CC: G. W. Ramaker.

NOVEMBER 12, 1938.

DEMPSEY OPTICAL COMPANY,
260 Spitzer Building, Toledo, Ohio.

GENTLEMEN: We regret that reports received from our representative, Mr. George W. Ramaker, make it necessary for us to discontinue the distribution of Soft-Lite Lenses through your Company after November 30th of this year.

Naturally, we are sorry that this action has become necessary.

Will you please acknowledge receipt of this communication?

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

1146 *Exhibit 26*

NOVEMBER 28, 1938.

DEMPSEY OPTICAL COMPANY,
250 Spitzer Bldg., Toledo, Ohio.

GENTLEMEN: We are sorry that we have to cancel your order for three pair of Thin-Lite Soft-Lites, #1 shade, 6mm flat, as your License to dispense Soft-Lite Lenses was cancelled as of November 30th, 1938, in accordance with our letter of November 12th.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.

AFI: AS.

1147 *Exhibit 27*

RE: BARNETT & RAMEL OPTICAL CO.

This company had always sold Velvet-Lite and several other rose-tint Soft-Lite imitative lenses, before he took on Soft-Lites and during that period. However, when his Velvet-Lites rose in sale over Soft-Lite, to the extent of 25% or more, and was to be extended in usage in new branches that were about to be opened in Iowa—and when we learned that Barnett-Ramel was also using a new name "Soft-Ray" on a rose tint, as well, then we felt that eventually the trade in that territory would think that they were getting Soft-Lites under another name, because of the combination of "Soft-Ray"* and "Velvet-Lite" that would definitely confuse, conflict, and spoil our picture. That is why we took the stand we did.

ARNOLD OPTICAL COMPANY

1935–1937

In 1936 they purchased 155 pairs, amounting to $189. In 1937, including his qualifying order of 500 pairs in order to become a Distributor, he purchased 647 pairs, totaling $880, so that it is evident there was a lack of volume and no sales development. In addition, his payments to us were slow and he had to be prodded on it continuously. He promised to sell initial stocks and this was the main reason he was qualified as a Distributor with such a low distributing order of 500 pairs. This he did not do and, in addition, we had to keep on prodding him for payment as mentioned above.

BARNETT & RAMEL

1931–1934

Used a "take-off" on Soft-Lite under the name of Soft-Ray. Was handled personnally by NS. We saw that he was advertising other lenses and we were not getting the volume we should have from his size of business. We talked with him and he advised us that he was going to sell anything he could and that ours was just another lens in his stock. We told him we never attempted to advise a wholesaler what to sell or not to sell since that was his business and he had to supply anything that was ordered from him. We did feel, however, that when he admits that one of the imitative lenses he sells represents a greater volume of his business

*Schulte 1931, Foundation for trade-mark suit started in 1933–4 vs. Schulte.

than Soft-Lite, and when such other lenses are a similar tint, then, for the amount of investment we had in the way of sales work, advertising material, etc., we felt that they were not giving us a fair share of their business to justify our continuing to service their account. He said he still preferred to feature the cheaper rose-tint and we told him that was his privilege and, apparently, he was better off with the cheaper lens than with ours. As a matter of fact, I gave Mr. Lehrich a Barnett and Ramel price list dated December 1933, entitled, "Chalnex-Price List," on which there appears an extra for a tint called Soft-Ray, which is a "take-off" on our name and might be confused by customers as a product of ours, when actually it was a cheap lens and might be second or third quality.

CLEVELAND OPTICAL CO.

1932–1932

According to our records they were on for only a few months. We never sold them and, therefore, there was no necessity of terminating business with them. We did not know whether it was because they planned to become Distributors and then didn't go through with it, which might have been the case. Actually, our card shows they were put on in September 1932 and cancelled in November 1932.

DEMPSEY-M'MANN

1928–1938

Their purchases kept dwindling and their payment record was very bad. We had to keep on prodding them for payment continuously. Also, they became large Nomarex users, which are second and third quality lenses. Therefore, they could not give us the distribution because their customers bought second and
1148 third quality lenses and were not interested in first quality Soft-Lite. Obviously, Dempsey-McCann became an improper source of distribution for us.

R. MOHR

1923–1938

They were taken over by AO. Since AO is not on our list of Distributors we had to cancel. It was common knowledge in Los Angeles and San Francisco that R. Mohr was taken over by AO although it was never disclosed by this company.

NEBRASKA OPT. CO.

1934–1937

According to our records this account was on our Class "A" Wholesale list from 1934 through 1937. They were removed from the list by our letter of February 10, 1937—such removal to become effective 30 days later, for the reason that purchases, particularly, in consideration of the fact that this account was a Class "A" Wholesaler, were very small, amounting to only 186½ pairs during the year 1936.

Our representative, Mr. Summers, called on this account on a day during the first week in March 1937, and at that time found that their working stock of Soft-Lite lenses did not exceed 25 pairs.

Therefore, both from the standpoint of usage and stock carrying, the situation was ridiculous and there was no choice but to remove such an account from the list.

For the first two months of 1937, preceding our removal, their total purchases amounted to only 46 pair.

NESS OPTICAL CO.

1940–1940

According to our records they were on for only a few months. We never sold them and, therefore, there was no necessity of terminating business with them. Actually, our card shows they were put on in February 1940, and cancelled in June 1940. Information is that he went bankrupt.

E. W. REYNOLDS CO.

1923–1938

They were taken over by AO. Since AO is not on our list of Distributors we had to cancel.

CALIFORNIA OPT. CO.

1922–1939

They went out of the wholesale business and became a retailer only and that is why we terminated our business with them.

ARNOLD OPTICAL COMPANY, CHICAGO, ILL.

Added Class A 7/2535; Added Dist. 6/10/37. Removed 12/15/37.

DEMPSEY OPTICAL CO., TOLEDO, OHIO

Added 1928. Removed 11/30/38.

CALIFORNIA OPTICAL CO., SAN FRANCISCO, CALIF.

Added 1922. Removed 5/1/39.

CLEVELAND OPTICAL CO., CLEVELAND, OHIO

Added Class A 9/8/32. Removed 11/17/32.

NEBRASKA OPTICAL CO., HASTINGS, NEBR.

Added Class A 9/11/34. Removed 3/6/37.

R. MOUR & SONS, SAN FRANCISCO, CALIF.

Added 1923. Removed 3/22/38.

E. W. REYNOLDS CO., LOS ANGELES, CALIF.

Added 1923. Removed 3/18/38.

NESS OPTICAL CO., MINNEAPOLIS, MINN.

Added 2/9/40. Removed 6/26/40.

BARNETT & RAMEL, KANSAS CITY, MO.

Added 1/31/31 (Class A). Removed 2/13/34.

1149 *Exhibit 28*

JUNE 26, 1939.

Mr. N. SINGER,
Soft-Lite Lens Co., 745 Fifth Avenue, New York, N. Y.

DEAR NAT: In accordance with our conversation at the Valley Club a few days ago, I am sending you a list of our "A" Wholesale Distributors. Will you in turn reciprocate with your list?

It was nice to see you and I hope that you had a successful and profitable bridge game on your trip to New York.

Kindest regards and best wishes.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

_____,
Frame Sales Department.

G. P. Moody: H.

1150 *Exhibit 29*

CC: RGL–FLS–AFI–TS
GD.

JUNE 27, 1939.

Mr. G. P. MOODY,
Bausch & Lomb Optical Co., Rochester, New York.

DEAR PLATT: Thank you for sending on your list of "A" Wholesale Distributors. The fact that you term these "A" makes me wonder if you have another list of Distributors—perhaps designated as "B"? If so, will you kindly send us these too.

We are sending you under separate cover a complete list of our Distributors.

The trip to New York was successful and pleasurable, although, as Ben may have told you, was not profitable to me. However, it was indeed worth it from the company standpoint as well as the enjoyment angle.

With kindest regards,
Sincerely yours,
N. Singer: TK.

1151 *Exhibit 30*

JUNE 26, 1939.

Mr. N. SINGER,
Soft-Lite Lens Co. Inc., 745 Fifth Avenue,
New York, N. Y.

DEAR NAT: Thank you very much for your letter of June 27 and your list of Wholesale Distributors. We have only one list—we used to have an "A" list and an "AA" list (the AA list purchased through the Affiliated Distributors) but we have now combined these into our "A" list and have still retained that caption—so you have the whole works.

I want to check your list with ours and when Ben returns from the Coast he will probably want to continue the conversation which we began at the Valley Club.

Kindest personal regards.
Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
———— ————,
Frame Sales Department.

G. P. Moody: H.

1152 *Exhibit 31*

JULY 10, 1939.

SOFT-LITE LENS CO.,
745 Fifth Avenue, New York, N. Y.

Attention: Mr. R. G. Landis.

DEAR RAY: I note that Nat is away, so I am addressing this correspondence to you, which is in answer to Nat's letter of June 27.

You sent us a list of "A" Wholesalers and we are sending you a list of accounts on our list which are not on your list; we are also sending you a list of accounts which are on your list which do not appear on ours. There isn't any reason that we can see why you should not be selling all of the accounts on our list, with the exception of those marked with a cross, and there isn't any reason why we should be selling Belgard, Inc., Blue Grass Optical Co., Dalton-Webb Optical Co., and Jenkel-Davidson Optical Co. Let us know what you think of this suggestion.

Kindest personal regards and best wishes.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,

_____,

Frame Sales Department.

G. P. Moody: H.

1153 *Exhibit 32*

JULY 11, 1939.

Mr. G. PLATT MOODY,
Bausch & Lomb Optical Company, Rochester, New York.

DEAR PLATT: Thank you very much for your letter of July 10th and for the listing of wholesalers you enclosed with it.

On your list of accounts who are on your list but not on the Soft-Lite list, according to our records, there are some discrepancies. E. A. Eisele are Soft-Lite Distributors but at the time our listing was sent you their status was not that of a Distributor and, therefore, their name was not included. They have since qualified.

The following accounts we carry as Retail Stock Licensees, even though they conduct a wholesale business. This is true because we had to eliminate our Class "A" wholesale classification and most of the accounts are not quite large enough to take on our Distributor proposition, at least, at the present time. These accounts are:

Binghampton Optical Company.
Boll & Lewis Optical Company.
Hooker Optical Company.
Hudson Valley Optical Company.
Kalamazoo Optical Company.

Lehigh Optical Company.
H. D. Palmer.
York Optical Company.
Dunning Optical Company.

I do not think that we should consider the Westchester Optical Company and certainly not the Dempsey Optical Company. I notice the Physicians Optical Company of Sio'x City, Iowa is marked with an "x" and I wonder why we should not consider selling them. I have been thinking about this account recently as a prospect.

Of the accounts on the Soft-Lite list who are not now on the Bausch & Lomb list, I certainly do not see why Bausch & Lomb should not try to sell Belgard, Inc., Blue Grass Optical Co., Dalton-Webb Optical Co., and Jenkel-Davidson Optical Co. Also, I think that the Schulte Optical Company could well be considered. As to B. K. Elliott, that's an account that should have some discussion. If I have an opportunity, while Ben is in town this week I will try to have a further discussion to the one which we had in Los Angeles.

Thanks and best regards, Platt.

Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

A True Copy from files of Soft-Lite Lens Company.

G. DEWEY.

1154 *Exhibit 33*

ABSORPTION OF SOFT-LITE SALES FROM 1922 TO 1940 BY COMPANIES NOW AFFILIATED WITH BAUSCH & LOMB

	Riggs Opt. Chi. & Omaha [1]	White-Haines Optical [2]	Southeastern Opt. [3]	McIntire, Magee & B. [4]	Colonial Optical [5]	Riggs Opt. San Fran. [6]	Total
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1922	17.1	4.3		2.0	13.5	2.0	38.9
1923	2.9	7.2		1.2	6.9	2.2	20.4
1924	5.4	20.3		1.0	26.4	2.9	56.0
1925	15.4	16.5		1.2	4.9	17.5	55.5
1926	18.4	18.6		1.3	9.7	12.4	60.4
1927 Units	21.9	21.2		1.3	8.2	9.3	61.9
1928 Units	25.9	17.6		1.9	8.9	12.8	67.1
1929 Units	23.3	17.1	2.2	1.7	7.1	11.4	62.8
1930 Units	24.8	14.0	4.4	2.9	6.0	11.4	63.5
1931 Units	20.4	16.2	4.7	3.5	6.8	11.8	63.4
1932 Units	21.5	15.3	6.4	4.5	8.5	8.8	65.0
1933 Units	22.0	15.3	6.8	3.6	7.6	8.8	64.1
1934 Units	23.0	15.5	7.5	4.0	7.4	11.6	69.0
1935 Units	22.0	15.3	6.9	4.2	8.2	11.2	67.8
1936 Units	22.2	13.9	7.9	4.4	7.1	11.5	67.0
1937 Units	22.1	13.6	8.8	4.4	6.9	10.6	66.4
1938 Units	23.0	12.5	10.5	3.6	7.2	11.1	67.9
1939 Units	22.5	12.9	10.1	3.9	8.0	11.2	68.6
1940 Units	21.8	12.5	10.2	3.6	7.9	12.1	68.1

[1] Became Affil. 1925. [2] Became Affil. 1929. [4] Became Affil. 1932.
[3] Became Affil. 1928. [4] Became Affil. 1930. [6] Became Aff. 1935.

1155 *Exhibit 34*

THE WHITE-HAINES OPTICAL COMPANY

COLUMBUS, OHIO

JANUARY 22, 1940.

MR. NAT SINGER,
% Soft-Lite Lens Company, Inc.
Squibbs Building,
New York City.

DEAR NAT: In order that we can be up to date on the status of the Wholesalers, will you have the list of wholesale Soft-Lite Licensees reviewed and complete information sent to us, in order to be sure that we're right up to date on this whole question.

Your Price List is apparently not complete, and we want to make sure that we understand the basis on which your Class A Wholesalers are buying from you, and we'd also like to know how many of these Class A Wholesalers have you sent your regular Distributors' Price List to?

A letter received from the Blue Grass Optical Company this morning would indicate that you have sent them your regular Distributors' Price List, in which case, of course, we're going to have to ask them to send their orders direct to Soft-Lite Company, because we cannot be selling Soft-Lite Lenses, and so forth, at our cost price, whereas we could have given these people some service on the basis of your Class A prices, apparently which you have discontinued.

Will you please straighten us out and give us information on this?

With best wishes,
Yours very truly,

DAN.

DDH:FH.

A true copy from the files of the Soft-Lite Lens Company, Inc.
G. DEWEY.

1156 *Exhibit 35*

SOFT-LITE LENS CO., INC.

JANUARY 24, 1940.

MR. D. D. HUBBELL,
White-Haines Optical Company,
82 North High Street,
Columbus, Ohio.

DEAR DAN: Nat is out of the office today calling on the local trade and, therefore, your letter of the 22nd addressed to him,

has come to my attention. I am replying to it because I believe that you may wish to have the information you ask for right away. I believe that I can give you the information in this letter.

So far as wholesalers are concerned we now have only one classification—that of Distributor. This has been the case since we were advised quite some months ago to discontinue the Class A wholesale proposition, because it constituted the selling of Wholesalers on two different price bases. Therefore, we have only one wholesale price list—the price list to Distributors, which is the one which was distributed recently and of which I enclose a copy.

When we discontinued the Class A wholesale proposition we contacted all of our Class A Wholesalers and gave them the choice of either qualifying as Distributors by placing an additional qualifying stock order, or having their classifications reduced to that of a retail stock Licensee.

The Blue Grass Optical Company, to which you refer as a case in point, qualified as Distributors so that the Distributor's price list was sent to them and is the one from which they should purchase. Of course this does mean, Dan, that Distributors, in order to buy Soft-Lite lenses to the best advantage, must now buy directly from us.

The only exception to the above situation is that there are a very few small Wholesalers, doing a local dispensing business, who are listed as retail stock Licensees and buy all of their Soft-Lite requirements from a Distributor on exactly the same basis as any other retail stock Licensee.

1157 Heretofore we have never had any policy covering the purchasing of Soft-Lite lenses by one Wholesaler from another since this happened only occasionally and since, too, we felt that it might best be considered the Wholesaler's business as to what price he wanted to bill such accommodation orders at. Of course where there were Class A Wholesalers in the territory, these sometimes bought from a Distributor as, for instance, Blue Grass purchasing from you, and such purchases were usually billed at the Class A price list by the Distributor.

Since the elimination of the Class A proposition the question has been raised as to whether it would not be a good idea to establish a definite policy and, in fact, I have on my desk at this moment a "draft" of an announcement of such a policy, of which I shall send you a copy for your comments before we release it.

I hope that the above answers your question, Dan.

With kindest regards,

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

D. L. Landis: IX

1158 *Exhibit 36*

WELCOMING LETTER TO NEW DISTRIBUTORS

We take pleasure in welcoming you as a Soft-Lite Distributor.

In accordance with the arrangements completed between you and our Mr. ------ we have shipped your qualifying Soft-Lite lens order. (Terms of payment are those agreed upon with Mr. ------ namely, that billing is to be made as of (date) and payments are to be made in four (4) equal monthly payments. Cash discount will be extended on the first payment if remittance is received within the cash discount period.) (The rest of the payments will be net.) As a Distributor, your purchases will be billed at the prices listed in the attached Distributor's price list and are subject to a bonus of 10¢ per pair on all purchases of single vision uncut lenses made during the preceding quarter, paid in check form at the end of each quarter.

A complete assortment of sales aids and advertising material will be sent you in a few days. For use on the direct mail promotional material with which you will be supplied from time to time, we would like to have your correct imprint for our files. Also, if you will send us the number of names on your statement mailing list, we shall be glad to provide regularly, a sufficient quantity for inserting with statements.

If you will give us the names of the salesmen, we shall be glad to add their names to our list and supply you and them with pertinent sales material from time to time.

In selling Soft-Lites to the retail trade, please be governed by the information found on page 17 of the Soft-Lite Stock Licensee price list.

As a Soft-Lite Distributor you have the privilege of opening new Soft-Lite Stock Licensee and Prescription Licensee accounts. The procedure is outlined on pages 17–20 of the Soft-Lite Stock Licensee Price List.

We are sending to you under separate cover a quantity of Stock Licensee applications and Prescription Licensees recommendation cards.

If there is any additional information you desire, please inquire.

We are sure that you will find the Soft-Lite Distributorship a very satisfactory and profitable investment.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.

A. F. Immig/d

1159 *Exhibit 37*

PRICE LIST TO SOFT-LITE STOCK LICENSEES SOFT-LITE LENSES

January 2, 1940

SOFT-LITE LENS COMPANY, INC.

Squibb Building, 745 Fifth Avenue, New York

1160 SOFT-LITE LENSES

Schedule 1.—Issued Pursuant to Soft-Lite Lens Company Manufacturer-Distributor Fair Trade Act Contracts

The sale of Soft-Lite Lenses and Blanks herein listed is controlled under Manufacturer-Distributor Fair Trade Act Contracts effective in all States in which Fair Trade Acts are in force.

The Minimum Prices specified for the products herein listed apply to all sales thereof by Distributors to Retailers in all such States, irrespective of whether or not either party to the transaction has signed a Fair Trade Act Contract, and are binding upon the seller and the buyer of such products.

The Minimum Prices herein set forth, at which these Soft-Lite Lenses and Blanks may be sold by Distributors to Retailers, are an integral part of the Manufacturer-Distributor Fair Trade Act Contract. A copy of this Price Schedule should be filed with such contracts.

INTRODUCTORY

This price list supersedes all former lists and supplements. It is effective January 2, 1940.

TERMS AND PRICES

All prices herein listed are net and are not subject to trade discounts beyond the usual 2% cash discount. No cash discount is allowed west of the Rocky Mountains.

The minimum resale prices at which Soft-Lite Lenses and Blanks may be sold by wholesale distributors to the retail optical trade are controlled under Manufacturer-Distributor Fair Trade Act Contracts in all States in which Fair Trade Acts are in force. This price schedule is an integral part of these Manufacturer-Distributor Fair Trade Act Contracts, and is binding both upon the buyer and the seller of the Soft-Lite Lenses and Blanks listed herein, irrespective of whether either party to the transaction has signed such a contract.

GUARANTEE

Soft-Lite Lenses are guaranteed to conform to established first quality lens standards and to be free from defects in material and workmanship.

Soft-Lite Glass and Soft-Lite Lenses are manufactured exclusively for the Soft-Lite Lens Company by the Bausch & Lomb Optical Company to the universally acceptable high standards of Bausch & Lomb Quality.

ACCEPTANCE OF ORDERS

The prices herein are subject to change without notice and to addition or increase for applicable taxes, excises or other charges imposed by any governmental authority with respect to the articles listed herein or to the sale, use or consumption thereof.

MINIMUM SALE OF STOCK LENSES

(To Stock Licensees only)

The Minimum Sale of Uncut Stock Lenses from Distributor to Retailer in quantities of less than five pairs assorted shall be two pairs of identical description. Any order for less than this quantity must be billed from the Single Pair Uncut Stock Price List. (See pages 13 and 14.)

Sales of Uncut Stock Lenses in quantities of five pairs or more assorted may be made by Distributors to Retailers in quantities of not less than one pair of identical description, and must be billed according to the column headings in which purchased.

The above requirement applies to sales of Uncut Stock Lenses within the range of Stock Foci, whether or not these are listed as "Foci Carried in Stock." Uncut Stock Lenses not listed as "Foci Carried in Stock" will be billed at the stock price plus 25c per pair net from Distributor to Retailer.

Semi-finished lenses and molded blanks may be purchased in any quantity, and must be billed according to the column headings in which purchased.

DEFINITION OF COLUMN HEADINGS

"2 Pairs of a Kind or 5 Pairs Assorted" means 2 pairs of lenses of identical description or 5 pairs of lenses of one type, of the same or assorted foci and shade. Quantities of 5 pairs or more of the same type can be made up in assortments of not less than one pair of identical description. Quantities of less than 5 pairs of the same type must be made up in assortments of not less than 2 pairs of identical description.

"10, 25, and 50 Pairs Assorted" means 10, 25 and 50 pairs respectively of lenses of one type, of the same or assorted foci and shade, with not less than one pair of any one description included within any assortment.

"Assorted" in this connection means lenses of one type assorted as to focus and shade.

Following is a list of the types of Soft-Lite Lenses:

Orthogon Soft-Lite Single Vision Uncut Lenses
Orthogon Soft-Lite Single Vision Semi-Finished Lenses
Certified Single Vision Uncut Lenses
Certified Single Vision Semi-Finished Lenses
Molded Blanks
Panoptik Soft-Lite Bifocals
Orthogon Soft-Lite Bifocals, Styles A, AA, B, C and D
Ultex Soft-Lite Bifocals, Styles A, E, B and L
Duo-Site Semi-Finished Bifocal Blanks
Duo-Site Rough Bifocal Blanks

An "assortment" may include, for example, spheres, cylinders, and sphero cylinders in Soft-Lite and in Orthogon or Balcor White Lenses. Uncut and semi-finished lenses cannot be included in the same assortment. Duo-Site and Ultex semi-finished bifocals cannot be included in the same assortment: but Orthogon Soft-Lite semi-finished bifocals, A, AA, B, C and D, may be included in the same assortment.

1161 EXCHANGE OF CUSTOMERS' LENSES

The exchange of customers' lenses for lenses of other foci or other specifications must not be permitted as a means of evading the minimum prices specified for quantities purchased in one order. In those cases where the exchange of customers' lenses is necessary, a charge for such exchange of not less than 25¢ per pair, or half pair, shall be made.

A pair of lenses consists of two lenses of identical focus and description. The exchange of two single lenses of different foci or description shall be regarded as the exchange of two individual half pairs of lenses, and the exchange charge of 25¢ shall apply to each.

When customers' lenses are to be exchanged for lenses of the same or lower focus division, the minimum charge for such exchange shall be 25¢ per pair or half pair.

When customers' lenses are to be exchanged for lenses of more expensive type or of higher focus division, the charge for such exchange shall be the difference between the first net column price of the lenses desired, and the first net column price of the lenses returned, plus 25¢ per pair or half pair.

Lenses not listed as regular Stock Foci are not subject to exchange.

Lenses outside the range of Stock Foci must be billed at prescription prices.

SHIPMENT AND BILLING OF QUANTITY ASSORTMENTS

The net prices given under the various Net Column Headings in the Stock Lens Price List are the minimum resale prices specified for quantities purchased in one individual order. Accumulating of orders for, or deliveries of, smaller quantities of lenses must not be permitted as a means of evading the minimum prices specified for quantities purchased in one order.

If the Distributor is unable to fill a customer's order for an assortment of Stock Lenses completely in one shipment, partial delivery of such order may be made, and the balance "back-ordered" for prompt delivery. When an order for a stock quantity has been placed and stocks are not sufficient to permit filling the order in one shipment, orders for ten or twenty-five pairs assorted must be filled in not more than two shipments, and orders for fifty pairs assorted must be filled in not more than three shipments.

The complete order must be billed at the time of original shipment. All deliveries on any individual order must be completed within 30 days from date of first shipment.

1162 Orthogon Series Single Vision Uncut

	Price per pair			
	2 pairs of a kind or 5 pairs assorted	10 pairs assorted	25 pairs assorted	50 pairs assorted
Spheres, + or − [1]				
Plano to 2.00	$2.35	$2.10	$1.90	$1.80
2.25 to 4.00	2.45	2.20	2.00	1.90
4.25 to 6.00	2.60	2.35	2.15	2.05
6.25 to 8.00	2.75	2.50	2.30	2.20
Plano Cyl., + only [1]				
0.12 to 2.00	2.50	2.25	2.00	1.90
2.25 to 3.00	2.60	2.35	2.10	2.00
3.25 to 4.00	2.75	2.50	2.25	2.15
Sphero Cyl., + ○ + [1]				
0.12 to 2.00 / 0.12 to 2.00	2.50	2.25	2.00	1.90
0.12 to 2.00 / 2.25 to 3.00	2.60	2.35	2.10	2.00
2.25 to 4.00 / 0.12 to 2.00	2.60	2.35	2.10	2.00
2.25 to 4.00 / 2.25 to 3.00	2.75	2.50	2.25	2.15
4.25 to 6.00 / 0.12 to 2.00	2.95	2.70	2.45	2.35
4.25 to 6.00 / 2.25 to 3.00	3.15	2.90	2.65	2.55
Sphero Cyl., − ○ + [1]				
0.12 to 2.00 / 0.12 to 2.00	2.55	2.40	2.15	2.05
0.12 to 2.00 / 2.25 to 3.00	2.75	2.50	2.25	2.15
0.12 to 2.00 / 3.25 to 4.00	2.95	2.70	2.45	2.35
2.25 to 4.00 / 0.12 to 2.00	2.75	2.50	2.25	2.15
2.25 to 4.00 / 2.25 to 3.00	2.90	2.65	2.40	2.30
2.25 to 4.00 / 3.25 to 4.00	3.05	2.80	2.55	2.45
4.25 to 6.00 / 0.12 to 2.00	3.05	2.90	2.55	2.45
4.25 to 6.00 / 2.25 to 3.00	3.20	2.95	2.70	2.60
4.25 to 6.00 / 3.25 to 4.00	3.35	3.15	2.85	2.75

[1] NOTES.—For edged lenses, 5 pairs or more, bevel or rimless, of identical size and shape, add 20c per pair to uncut prices.

For drilled lenses, 5 pairs or more of identical size and shape, add to rimless edge prices: 2 holes per pair, 10c; 4 holes per pair, 20c.

All above items controlled under Fair Trade Acts.

1163 Certified Series Single Vision Uncut

	Price per pair			
	2 pairs of a kind or 5 pairs assorted	10 pairs assorted	25 pairs assorted	50 pairs assorted
Spheres, + or − [1]				
0.12 to 2.00	$1.95	$1.75	$1.55	$1.45
2.25 to 4.00	2.05	1.85	1.65	1.55
4.25 to 6.00	2.30	2.00	1.80	1.70
6.25 to 8.00	2.35	2.15	1.95	1.85
Plano Cyl., + only [1]				
0.12 to 2.00	2.10	1.90	1.65	1.55
2.25 to 3.00	2.20	2.00	1.75	1.65
3.25 to 4.00	2.35	2.15	1.90	1.80
Sphero Cyl., + ○ + [1]				
0.12 to 2.00 / 0.12 to 2.00	2.10	1.90	1.65	1.55
0.12 to 2.00 / 2.25 to 3.00	2.20	2.00	1.75	1.65
2.25 to 4.00 / 0.12 to 2.00	2.20	2.10	1.80	1.70
2.25 to 4.00 / 2.25 to 3.00	2.35	2.25	1.95	1.85
4.25 to 6.00 / 0.12 to 2.00	2.55	2.45	2.10	2.00
4.25 to 6.00 / 2.25 to 3.00	2.70	2.60	2.25	2.15
Sphero Cyl., − ○ + [1]				
0.12 to 2.00 / 0.12 to 2.00	2.25	2.05	1.80	1.70
0.12 to 2.00 / 2.25 to 3.00	2.35	2.15	1.90	1.80
0.12 to 2.00 / 3.25 to 4.00	2.55	2.35	2.10	2.00
2.25 to 4.00 / 0.12 to 2.00	2.35	2.25	1.90	1.80
2.25 to 4.00 / 2.25 to 3.00	2.50	2.40	2.05	1.95
2.25 to 4.00 / 3.25 to 4.00	2.65	2.55	2.20	2.10
4.25 to 6.00 / 0.12 to 2.00	2.65	2.55	2.20	2.10
4.25 to 6.00 / 2.25 to 3.00	2.80	2.70	2.35	2.26
4.25 to 6.00 / 3.25 to 4.00	2.95	2.85	2.50	2.40
Plano Uncut [1]				
6.00 Curve:				
50 mm	1.85	1.75	1.55	1.35
57 mm	2.40	2.20	1.95	1.70
63 mm	2.95	2.70	2.35	2.60
71 mm	3.55	3.30	2.90	2.50
80 mm	4.15	3.90	3.45	3.00

[1] NOTES.—For edged lenses, 5 pairs or more, bevel or rimless, of identical size and shape, add 20c per pair to uncut prices.

For drilled lenses, 5 pairs or more of identical size and shape, add to rimless edge prices: 2 holes per pair, 10c; 4 holes per pair, 20c.

All above items controlled under Fair Trade Acts.

1164 Orthogon Series Single Vision Semifinished

	Price per pair			
	Less than 10 pairs	10 pairs assorted	25 pairs assorted	50 pairs assorted
Spheres, groups A to M: [1]	$2.00	$1.80	$1.65	$1.55
Cylinders, groups A, B, C, D, E, F, H, J, K [1]				
0.12 to 2.00	2.15	1.95	1.80	1.70
2.25 to 3.00	2.25	2.05	1.90	1.80
3.25 to 4.00	2.35	2.15	2.00	1.90
4.25 to 6.00	2.45	2.25	2.10	2.00
Cylinders, groups G, L, M: [1]				
0.12 to 2.00	2.35	2.10	1.95	1.85
2.25 to 3.00	2.45	2.20	2.05	1.95
3.25 to 4.00	2.55	2.30	2.15	2.05
4.25 to 6.00	2.65	2.40	2.25	2.15

Certified Series Single Vision Semifinished

Spheres, + or − 6.00 B. C.:[1]				
3 mm	1.60	1.45	1.35	1.25
4 mm	1.75	1.60	1.50	1.40
6 mm	2.05	1.90	1.80	1.70
Cylinders, + 6.00 B. C.:[1]				
3 mm (0.12 to 2.00)	1.95	1.75	1.60	1.45
3 mm (2.25 to 3.00)	2.05	1.85	1.70	1.55
3 mm (3.25 to 4.00)	2.15	1.95	1.80	1.65
3 mm (4.25 to 6.00)	2.25	2.05	1.90	1.75
4 mm (0.12 to 2.00)	2.10	1.90	1.75	1.60
4 mm (2.25 to 3.00)	2.20	2.00	1.85	1.70
4 mm (3.25 to 4.00)	2.30	2.10	1.95	1.80
4 mm (4.25 to 6.00)	2.40	2.20	2.05	1.90
6 mm (0.12 to 2.00)	2.25	2.05	1.90	1.75
6 mm (2.25 to 3.00)	2.35	2.15	2.00	1.85
6 mm (3.25 to 4.00)	2.45	2.25	2.10	1.95
6 mm (4.25 to 6.00)	2.55	2.35	2.20	2.05
Cylinders, + 9.00 B. C.:[1]				
4 mm (0.12 to 2.00)	2.85	2.65	2.45	2.25
4 mm (2.25 to 3.00)	2.95	2.65	2.45	2.25
4 mm (3.25 to 4.00)	3.05	2.75	2.55	2.35
4 mm (4.25 to 6.00)	3.15	2.85	2.65	2.45

[1] +7.50 B. C. in 4 mm only available at prices of +6.00 B. C. 4 mm.
All above items controlled under Fair Trade Acts

1165

SOFT-LITE MOLDED BLANKS

Flat or +6.00 Base Curve—Available in All Shades

	Price per pair
50 mm round:	
4 mm thick	$1.20
6 mm thick	1.40
57 mm round:	
4 mm thick	1.50
6 mm thick	1.80
63 mm round	
4 mm thick	1.85
6 mm thick	2.05
71 mm round:	
4 mm thick	2.10
6 mm thick	2.30
80 mm round	
4 mm thick	2.45
6 mm thick	2.65

SOFT-LITE THIN-LITE MOLDED BLANKS

Flat or +6.00 Base Curve—Available in No. 1 Shade Only

50 mm round:	
4 mm thick	$3.10
6 mm thick	3.40
8 mm thick	3.70
10 mm thick	4.00

SOFT-LITE LAMINEX BLANKS

Semifinished	$4.00

All above items collected under Fair Trade Acts.

1166 PANOPTIK BIFOCALS

Rough and Semifinished—Available in 1, 2, and 3 Shades

	Price per pair	
	To "A" licensees	To "AA" licensees
REGULAR STYLE PANOPTIKS, 54 mm round, A, B, C, D, E, F, K: [1]		
Semifinished	$6.56	$5.84
Rough	5.43	4.84
AX, BX, CX, 52 x 57 mm size X, Y, Z, 54 mm round: [1]		
Semifinished	7.31	6.50
Rough	6.18	5.50
PR PANOPTIKS, 54 mm round: [1]		
Semifinished	8.81	7.84
Rough	7.68	6.84
PS PANOPTIKS, 54 mm round: [1]		
Semifinished	10.31	9.17
Rough	9.18	8.17
PANOPTIK CATARACT BIFOCAL, Fused Lenticular, any power: [1]		
Semifinished	13.12	11.67
Rough	10.57	9.67
Add TO ABOVE: [1]		
For Minus Segment	2.63	2.33
For Two Segments on same blank	3.00	2.67
For Trifocal	2.63	2.33
For blanks larger than regular up to 63 mm diameter	.75	.67

ORTHOGON SERIES BIFOCALS

Semifinished

	Price per pair	
	Less than 10 pairs	10 pairs or more assorted
Onepiece construction—Available in all shades:		
Style "A" Segment size 38 x 19 mm	$6.00	$5.00
Style "AA" Segment size 38 x 30 mm	6.70	5.70
Style "B" Segment size 22 mm round	6.35	5.35
Fused Nokrome construction—Available in 1, 2, and 3 shades:		
Style "C" Segment size 16 mm round	5.50	4.50
Style "D" Segment size 20 mm round	5.50	4.50

	Per pair
Add to above, for Styles "A", "AA" and "B":	
For Prism on Reading Portion, base in or base out, 3.50 △ or less	$2.50
For Prism on Reading Portion, base in or base out, stronger than 3.50 △	4.50
For Prism on Reading Portion, base up, base down, or base oblique, 3.50 △ or less	6.50
For Prism on Reading Portion, base up, base down, or base oblique, stronger than 3.50 △	7.50
For Reading Addition stronger than 4.50 D	4.50

All above items controlled under Fair Trade Acts.

1167 SEMIFINISHED SOFT-LITE BIFOCAL BLANKS

One Piece Construction—Available in All Shades

	Price per pair	
	Less than 10 pairs	10 pairs or more assorted
Style "A" Segment (38 x 19 mm)	$5.75	$4.75
Style "E" Segment (16 x 30 mm)	5.75	4.75
Style "B" Segment (22 mm round)	6.10	5.10

	Per pair
Add to above, per pair:	
For Prism on Reading Portion, base in or base out, 3.50 △ or less	$3.50
For Prism on Reading Portion, base in or base out, stronger than 3.50 △	4.50
For Prism on Reading Portion, base up, base down, or base oblique, 3.50 △ or less	6.50
For Prism on Reading Portion, base up, base down, or base oblique, stronger than 3.50 △	7.50
For Reading Portion stronger than 4.50 D addition	1.50
For Plano base up to 4.50 D addition	4.50
For Plano base stronger than 4.50 D addition	5.00
For Blanks over 6 mm thick and less than 9 mm thick	2.00
For Blanks 9 mm thick or over	3.00
For Bi-Convex form, Double Regular Price.	
For special base curves (A or E style)	1.00
For special base curves (B or L style)	2.00
For Bicopcave form	3.00
For plano addition	1.00
For minus addition	3.50
For flint construction	3.00

DUO-SITE

Available in All Shades.

	Less than 10 pairs	10 pairs or more assorted
Rough	$3.75	$3.00
Semi-finished	4.50	3.75

	Per pair
Add to above, per pair:	
For 30 mm rough segment	$1.00
For 35 mm rough segment	1.00
For Blanks 6½ and 7 mm thick	1.00
For Blanks thicker than 7 mm	2.00
For Toric Blanks with segment fused on inner curve	1.00
For Blanks larger than regular size	1.50
For plus or minus curve stronger than 4.00 D on flat blanks	1.00
For semi-finished with addition stronger than 4.50 up to 6.00 D	1.50

All above items controlled under Fair Trade Acts.

1168 SEMIFINISHED BIFOCALS IN STOCK—LENS FOCI CARRIED IN STOCK

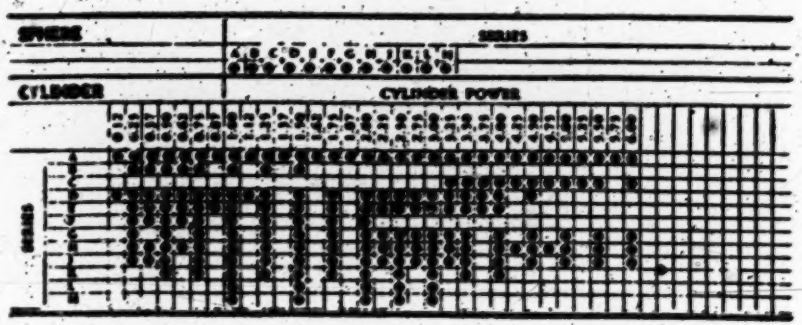
From an economic standpoint it would be obviously impractical to stock a full range of foci in all styles of lenses. However, direct contract with the profession and trade and with our own sales records over a several year period are excellent criteria for indicating the correct and practical foci to carry in stock.

An extra charge of 25c per pair above the price listed in the column in which stock lenses are purchased will be made from Distributor to Retailer for lenses that fall within the stock range but are not listed as stock foci in the following charts. The same extra charge applies to semifinished and rough bifocal blanks not indicated as stock numbers.

Foci outside the stock ranges will be supplied at prescription prices.

ORTHOGON SERIES SEMIFINISHED SINGLE VISION LENSES IN STOCK

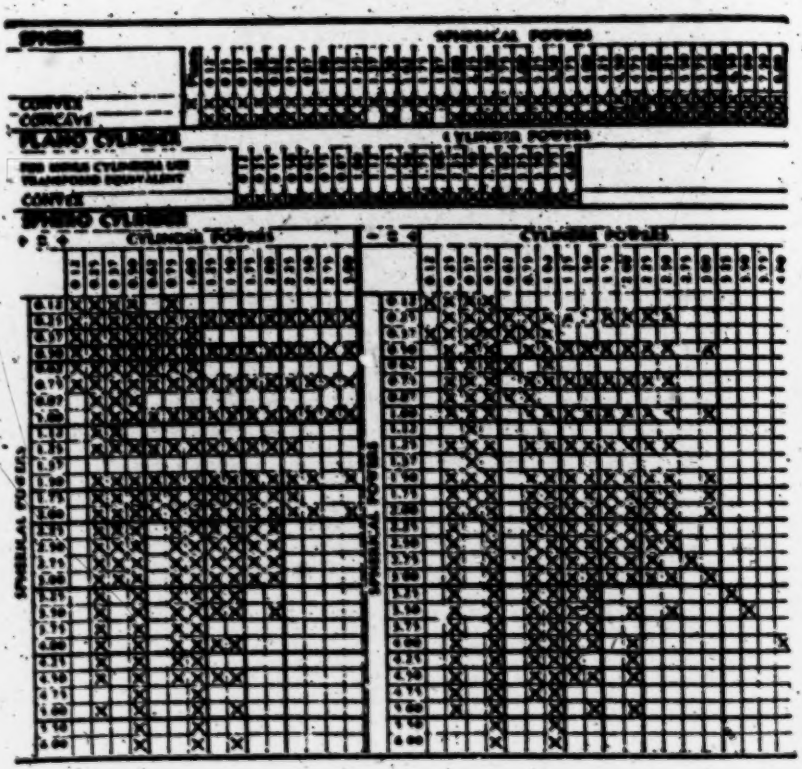
1, 2, and 3 Shades



1169 LENS STOCK FOCI LIST—ORTHOGON AND CERTIFIED SERIES

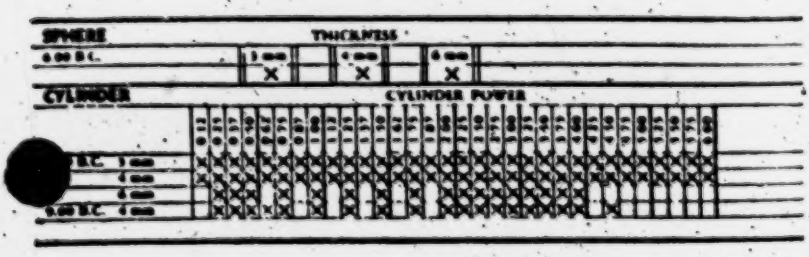
Adopted by the Optical Manufacturers Association October 8, 1937—Effective November 1, 1937

Single Vision Uncut—1 and 2 Shades



CERTIFIED SERIES SEMIFINISHED

All Shades



1170 ORTHOGON SERIES, SINGLE VISION, SINGLE PAIR UNCUT

	Price per pair	
	Uncut	Uncut
Spheres, + or −		
Plane to 2.00		$2.55
2.25 to 4.00		2.70
4.25 to 6.00		2.85
6.25 to 8.00		3.00
Plano cylinders, + only—For Minus Cylinders use Transposed Equivalent:[1]		
0.12 to 2.00 Cyl		2.95
2.25 to 3.00 Cyl		3.15
3.25 to 4.00 Cyl		3.35
Sphero Cylinders:[1]	+ ○ +	− ○ +
0.12 to 2.00 Sph. ○		
0.12 to 2.00 Cyl	$2.95	$3.15
2.25 to 3.00 Cyl	3.15	3.40
3.25 to 4.00 Cyl		3.65
2.25 to 4.00 Sph. ○		
0.12 to 2.00 Cyl	3.35	3.65
2.25 to 3.00 Cyl	3.55	3.90
3.25 to 4.00 Cyl		4.15
4.25 to 6.00 Sph. ○		
0.12 to 2.00 Cyl	4.05	4.40
2.25 to 3.00 Cyl	4.30	4.90
3.25 to 4.00 Cyl		5.40

All above items controlled under Fair Trade Acts.

1171. CERTIFIED SERIES, SINGLE VISION, SINGLE PAIR UNCUT

	Price per pair	
	Uncut	Uncut
Spheres, + or −[1]		
0.12 to 2.00		$2.15
2.25 to 4.00		2.30
4.25 to 6.00		2.45
6.25 to 8.00		3.20
Plano cylinders, + only—[1]For minus cylinders use transposed equivalent:		
0.12 to 2.00 cyl		2.55
2.25 to 3.00 cyl		2.75
3.25 to 4.00 cyl		2.95
Sphero cylinders:[1]	+ ○ +	− ○ +
0.12 to 2.00 sph. ○		
0.12 to 2.00 cyl	$2.55	$2.75
2.25 to 3.00 cyl	2.75	3.00
3.25 to 4.00 cyl		3.25
2.25 to 4.00 sph. ○		
0.12 to 2.00 cyl	2.95	3.25
2.25 to 3.00 cyl	3.15	3.50
3.25 to 4.00 cyl		3.75
4.25 to 6.00 sph. ○		
0.12 to 2.00 cyl	3.90	4.00
2.25 to 3.00 cyl	4.10	4.50
3.25 to 4.00 cyl		5.00
Plano uncut 6.00 curve:[1]		
50 mm		$2.05
57 mm		2.60
63 mm		3.15
71 mm		3.75
80 mm		4.35

All above items controlled under Fair Trade Acts.

1172 DUO-SITE BIFOCAL BLANK CHART

Amount added		0.50	0.75	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	3.75	4.00
Curve on segment side	6.00 6.25	708	710	712	714	716	718	720	722	724	726	728	730	732	.....	.....
	6.50 6.75	707	709	711	713	715	717	719	721	723	725	727	729	731	.....	.....
	7.00 7.25	706	708	710	712	714	716	718	720	722	724	726	728	730	732	.....
	7.50 7.75	705	707	709	711	713	715	717	719	721	723	725	727	729	731	.....
	8.00 8.25	804	806	808	810	812	814	816	818	820	822	824	826	828	830	832
	8.50 8.75	.....	805	807	809	811	813	815	817	819	821	823	825	827	829	831
	9.00 9.25	.....	804	806	808	810	812	814	816	818	820	822	824	826	828	830
	9.50 9.75	.....	.....	805	807	809	811	813	815	817	819	821	823	825	827	829
	10.00 10.25	.....	.....	804	806	808	810	812	814	816	818	820	822	824	826	828
	10.50 10.75	.....	.....	.....	805	807	809	811	813	815	817	819	821	823	825	827
	11.00 11.25	.....	.....	.....	804	806	808	810	812	814	816	818	820	822	824	826
	11.50 11.75	.....	.....	.....	.....	805	807	809	811	813	815	817	819	821	823	825

1173 TABLE OF GRINDING TOOLS TO USE WITH SOFT-LITE THIN-LITE BLANKS

To grind	Use tool	To grind	Use tool
4.00	3.12	12.25	9.37
4.25	3.25	12.50	9.62
4.50	3.50	12.75	9.75
4.75	3.62	13.00	10.00
5.00	3.87	13.25	10.12
5.25	4.12	13.50	10.37
5.50	4.25	13.75	10.62
5.75	4.50	14.00	10.75
6.00	4.62	14.25	11.00
6.25	4.75	14.50	11.12
6.50	5.00	14.75	11.37
6.75	5.12	15.00	11.50
7.00	5.37	15.25	11.75
7.25	5.62	15.50	11.87
7.50	5.75	15.75	12.12
7.75	6.00	16.00	12.25
8.00	6.12	16.25	12.50
8.25	6.37	16.50	12.62
8.50	6.50	16.75	12.87
8.75	6.75	17.00	13.12
9.00	6.87	17.25	13.25
9.25	7.12	17.50	13.50
9.50	7.25	17.75	13.62
9.75	7.50	18.00	13.87
10.00	7.62	18.25	14.00
10.25	7.87	18.50	14.25
10.50	8.00	18.75	14.37
10.75	8.25	19.00	14.62
11.00	8.50	19.25	14.75
11.25	8.62	19.50	15.00
11.50	8.87	19.75	15.12
11.75	9.00	20.00	15.37
12.00	9.25		

Example: To grind a 9.00 D. surface on Soft-Lite Thin-Lite blanks use a regular 6.87 D. grinding tool. *Soft-Lite Thin-Lite blanks are products of the Soft-Lite Lens Company, Inc., 745 Fifth Avenue, New York City.

* Reg. U. S. Pat. Off.

1174 THE SOFT-LITE LICENSE SALES PLAN DISTRIBUTION POLICY

There are two types of Soft-Lite Registered Dispensing Licenses—the Stock License and the Prescription License. With the exception of Orthogon Licensees and Panoptik Licensees (who have certain privileges indicated below) Soft-Lite Lenses are sold only to Soft-Lite Licensees. Stock Licensees only may purchase Soft-Lite Lenses in uncut form from the Stock Price List. They must be equipped with surfacing machinery to purchase semi-finished lenses or molded blanks.

Oculists who do their own dispensing are appointed by Soft-Lite Distributors, by letter on the Soft-Lite Distributor's letterhead, as Prescription Licensees. Orthogon Franchise Dealers who are not Soft-Lite Prescription or Stock Licensees, are automatically listed as Soft-Lite Prescription Licensees, so that they are entitled to purchase Soft-Lite Lenses in the regular ("Certified") series on a prescription basis. Soft-Lite Licenses are not transferable.

Orthogon Licensees and Panoptik Licensees, even if they are not Soft-Lite Licensees, are privileged to purchase Orthogon Soft-Lite Lenses or Panoptik Soft-Lite Bifocals respectively. Similarly, Soft-Lite Stock Licensees, even if they are not Orthogon Licensees, are privileged to purchase Orthogon Soft-Lite Lenses on a stock basis. However, Soft-Lite Licensees who are not Panoptik Licensees cannot buy Panoptik Soft-Lite Bifocals on any basis.

Both Soft-Lite Stock and Prescription Licensees are classified as either "active" or "inactive", depending upon the proportion of Soft-Lite Lenses purchased to their total annual lens usage. With the exception of certain items, the distribution of all important pieces of Soft-Lite sales promotion material are restricted to active Licensees only.

A Soft-Lite Identification Plaque is furnished to all Soft-Lite Licensees. The Soft-Lite Protection Certificate identifies genuine Soft-Lite Lenses to the dispenser and to the patient, and indicates the wholesale source of supply.

Requirements—Stock License

1. A. Must have fulfilled the legal requirements applicable to his profession.

B. Must not indulge in any form of "bait" advertising.

C. Must not indulge in installment advertising in which price is mentioned in any form.

D. Must conduct his business or practice in a reputable and ethical manner.

2. Must have cutting and edging equipment in regular use.

1175 3. Must place an initial lens stock order for a minimum of 50 pairs of uncut Soft-Lite Lenses, for complete shipment upon acceptance of the application.

If the prospect has own surfacing plant he may qualify by ordering 25 pairs of uncut Soft-Lite Lenses and a sufficient quantity of semi-finished lenses, which may include bifocal blanks, to the total amount of the value of 50 pairs of uncut lenses.

Prescription License

1. A. Must have fulfilled the legal requirements applicable to his profession.

B. Must not indulge in any form of bait advertising.

C. Must not indulge in installment advertising in which price is mentioned in any form.

D. Must conduct his business or practice in a reputable and ethical manner.

Combination Soft-Lite License—Orthogon License

A customer who is neither a Soft-Lite Stock Licensee nor an Orthogon Franchise Dealer may qualify for both Licenses simultaneously providing, of course, that he meets all of the necessary requirements. In this case both the procedure for selling a Soft-Lite Stock License and that of appointing an Orthogon Licensee must be followed. Such a transaction can only be handled by a wholesaler who is both a Soft-Lite Distributor and an Orthogon Distributor. The Initial lens stock must call for a minimum of 50 pairs of Soft-Lite Lenses and 100 pairs of Orthogon Lenses and may be made up in various assortments, a pair of Orthogon Soft-Lite Lenses being considered as both a pair of Soft-Lite Lenses and a pair of Orthogon Lenses. For example, an order for 50 pairs of Orthogon Soft-Lite Lenses and 50 pairs of white Orthogon Lenses would meet the initial stock requirements.

Licensing Procedure—Stock License

A. By Salesmen.

1. Investigates the prospect carefully to determine whether all requirements can be fulfilled.

2. Obtains the applicant's signature on the application, in triplicate. The terms of the License, as shown on the cover of the pad of application forms, are also a part of the application and should be read by the applicant.

3. Fills in the business information data, specifies the promotional material required and signs in space indicated.

4. Sends the original and duplicate copies of the application to the main office of the Soft-Lite Distributor with the initial stock order. He retains the triplicate copy for his reference.

1176 B. By the Main Office of the Soft-Lite Distributor.

1. If the application is approved by the main office of the Distributor, the original and duplicate copies are signed as indicated.

2. The original copy is then sent to the Soft-Lite Lens Company together with the initial lens stock order.

C. By the Soft-Lite Lens Company.

1. On approval of the application by the Soft-Lite Lens Company, a Registered Dispensing License (Stock Classification) is sent to the Licensee.

2. An Identification Plaque bearing the number specified in the License is also sent to the Licensee.

3. The initial lens stock and promotional material requested is sent direct to the Licensee from New York.

4. Slips carrying the name and address for affixing to Soft-Lite Distributors' Soft-Lite Licensee Lists are sent to all Soft-Lite Distributors in the territory of the applicant, notifying them of the appointment as a Soft-Lite Stock Licensee.

5. If the application is rejected, the Soft-Lite Lens Company will notify the Distributor that the application has not been approved.

Prescription License

The Soft-Lite Prescription License is a *dispensing* license and it is only necessary, therefore, for refractionists or retailers who actually dispense Soft-Lite Lenses to the consuming public to be licensed. This includes, all optometrists, retail dispensing opticians, and oculists who do their own dispensing. It is not necessary that oculists who dispense through either a wholesale or retail dispensing optician be licensed.

Licensing Procedure

A. By Salesman.

1. Investigates the prospect carefully to determine whether all the requirements can be fulfilled.

2. Fills in the Recommendation Card advising the Soft-Lite Lens Company of the desire of the applicant to become a Soft-Lite Prescription Licensee.

3. Fills in the business information data and specifies the promotional material required.

4. Sends the original signed Recommendation Card to the main office of the Soft-Lite Distributor.

B. By the Main Office of the Distributor.

1. On approval by the main office of the Distributor the Recommendation Card is sent to the Soft-Lite Lens Company.

C. By the Soft-Lite Lens Company.

1. On approval of the application by the Soft-Lite Lens Company, a letter is sent to the applicant together with a Registered Dispensing License—(Prescription Classification).

1177 2. An Identification Plaque bearing the number specified in the License is also sent to the Licensee.

3. The promotional material requested is sent direct to the Licensee from New York.

4. Slips carrying the name and address for affixing to Distributors' Soft-Lite Licensee Lists are sent to all Soft-Lite Distributors in the territory of the applicant, notifying them of the appointment as a Soft-Lite Prescription Licensee.

5. If the application is rejected, the Soft-Lite Lens Company will notify the Distributor that the recommendation has not been approved.

Termination Procedure

If it is found necessary to terminate a License, in accordance with the provisions of the License, a letter will be sent to the Licensee, with a copy to the Soft-Lite Distributor from whom the application was originally received, notifying the Licensee that his License will be terminated 30 days after the date of the letter. At the expiration of the 30 day period a notice is sent to all Soft-Lite Distributors in the territory, advising that the License has been terminated, and to remove the name from their Soft-Lite Licensee List.

1178 *Exhibit 39*

Soft-Lite Lenses

THEIR PURPOSE, ADVANTAGES, AND MERITS TOGETHER WITH A BRIEF HISTORY OF THE USE OF LIGHT ABSORPTIVE LENSES

For hundreds of years people have, in one way or another, tried to protect their eyes from the overbrightness produced by excessive amounts of light. Familiar is the picture of the Indian of our forefathers' day, whose eyes had to be trained to see distanct objects, in the characteristic pose of one peering into distant spaces and discovering that he sees more sharply by holding the palm of his hand just above his eyes, thus cutting down the interference caused by the glare of the sun.

It is a far cry from that day to this. Modern civilization, with its ever-increasing amounts of light, both day and night, calls for scientific protection against the overbrightness that is present in too much light.

Many years ago, eye-glass wearers and others who did not wear correctives lenses, began experimenting with colored lenses of various shades and densities to protect their eyes from glare. Armed only with the meager knowledge of ophthalmic glassmaking existent at the time, these early experimenters groped their way through all the colors of the spectrum and its many shades and tints. Looking back, we can remember the smokes, the blues, the greens, the ambers and then the period that gave us such trade names as Euphos, Noviol, Fieuzal, Chlorophile, Cobalt Blue, and so on, each name signifying a tint or shade having, it is true, some merit as a light reducer or glare protector but at the same time having enough undesirable features to make its universal acceptance out of the question.

Practically all these early colored lenses were used for conditions of excessive glare such as are found in semi-tropical countries, in southern parts of our own continent, on beaches, and in

various industrial manufacturing operations. Only in comparatively few cases did the refractionist feel justified in prescribing them for constant wear. Then too, patients rebelled against many of these weird colors and shades, even for occasional wear, because of their ugly and decidedly unflattering appearance. These early experiments, and they were only experiments, enjoyed only very short lives and, because of their many inherent defects, failed to pass that exacting, never-failing criterion, public demand.

This brings us to the year 1908—to the conception and introduction of Soft-Lite Lenses. During their years of infancy Soft-Lites gained recognition slowly but none the less surely. Later, in 1915, a lens known as "Crookes" was introduced to this country. It took its name from the English scientist, Sir William Crookes, who was supposed to have developed it as the ideal light-reducing lens. It enjoyed a period of great popularity for two reasons, both of which afterward proved to be basically unsound. (1) The 1179 use of Sir William Crookes' name in connection with its advertising and sale; (2) It was the first nationally known lens of its type at a time when the eye-glass wearing public was erroneously led to believe that ultra-violet rays, even in the smallest amounts, were dangerous to good eye-sight. From the standpoint of appearance it undoubtedly was an improvement over the colored lenses that had been used in the past. However, it soon lost the sponsorship of the leading ophthalmic lens manufacturers and, as a result, the market was flooded with inferior low-priced glass and reliable practitioners lost confidence.

During the period of Crookes' popularity, Soft-Lites were being improved and were steadily gaining wider use and acceptance by the profession. In the year 1924 the Bausch & Lomb Optical Company became the manufacturers of these lenses for the Optical Service Corporation—predecessor of the Soft-Lite Lens Company. As evidence of their stamp of unreserved approval it is interesting to note that for a period of over 50 years Soft-Lites are the first lenses, over which they have no distribution control, that Bausch & Lomb has consented to manufacture.

Under the direction and sales policies of the Soft-Lite Lens Company, Soft-Lites are today generally recognized as the accepted leader in the field of light absorptive-lenses.

DESCRIPTION OF SOFT-LITE OPHTHALMIC GLASS

An ophthalmic glass that will properly and safely provide neutral absorption by a reduction in the total intensity of the visible spectrum is, logically, a glass whose transmission curve will parallel that of white crown glass as closely as possible. That is what is available to the refractionist in Soft-Lite glass.

An inspection of the composite absorption chart of white and Soft-Lite glass will indicate that the absorption of ultra-violet radiation by No. 1 shade Soft-Lite approximates that of white crown glass and that, while reduction of the visible spectrum is sufficiently greater to perform its function of providing more comfortable vision, it very closely parallels that of white crown glass in this respect as well. Because of this neutral transmission the undesirable effects of some colored glasses—notably, habit forming tendencies, reduction of visibility, disturbance of color perception—are not present in Soft-Lite.

Although Soft-Lite Lenses have been classified as "tinted lenses" due to the fact that they contain a certain amount of pigmentation giving them their characteristic rose tint, they are not properly so classified. The refractionist should classify the products which he uses, not by their appearance, but by the function which they perform. Inasmuch as the essential difference between white crown glass and Soft-Lite lies only in the difference in the amount of similar neutral absorption they should be considered in the same general category as is indicated by the following quotation from the United States Bureau of Standards, Booklet No. 369, "Transmissive Properties of Eye-Protective Glasses and Other Substances".

1180 "The Soft-Lite Glasses are slightly tinted to the visible rays. However, in the ultra-violet they differ but little in transmission (fig. 1) from the white crown glasses commonly worn in spectacles."

The prescription of white crown glass lenses, therefore, involves the prescription of absorption, so it is evident that the prescription of Soft-Lite Lenses differs only in that it provides sufficient additional neutral absorption over that provided by white crown glass to give patients greater comfort. This is made necessary by the higher intensities of natural and artificial light reflected from below the level of the eye under present day living conditions. As has been stated before, and it bears repeating, our modern civilization has brought with it such increased amounts of light intensified by highly reflecting man-made surfaces, that eyes have become more and more sensitive to glare. The light which Nature placed overhead is now reflected into our eyes from below the level of the eye and from unfavorable angles. The increased intensities of reflected light from such sources as white buildings, concrete roads, shiny automobiles, illuminated signs, Neon lighting, polished walls, glass-top desks, poor office layouts with chairs facing windows, and often unscientific and improperly placed lighting fixtures make protection from over-brightness an absolute necessity for normal, comfortable vision. This reduction of "over-

brightness", in addition to affording greater comfort, has been found to provide improved visual acuity for many patients and also a lessening of internal and edge reflections in rimless lenses. These facts, added to the greater inconspicuousness and better appearance of Soft-Lite Lenses, are some of the reasons for the growing appreciation of Soft-Lite Lenses by the public, the refractionist and the optician.

A SUMMARY OF SOFT-LITE ADVANTAGES

1. Even Absorption

The preponderance of authority indicates that glare is caused by too much visible light—a quantitative problem—rather than too much of any particular ray or rays, invisible or visible—or in other words, a qualitative problem. Charles Sheard, A. M., Ph. D., of the Mayo Clinic, Rochester, Minnesota, crystalized this thought in a recent scientific paper when he said: "The function of the ultra-violet in producing ocular discomfort has been overemphasized, for the good reason that no light source yet developed, has in percentage as much ultra-violet as does full sunlight. Much of the irritation and fatigue which shop and office men and women experience is due to glare."

A prime requirement in developing a glare-absorptive lens is that its line of transmission should be kept as nearly as possible like that of white crown glass. At the same time the lens should have enough absorptive power throughout the visible spectrum to make it truly effective, even in its lightest shade, to appreciably reduce glare.

The chart prepared and published by the United States Bureau of Standards, illustrates how well this has been done. The Soft-Lite transmission curve approximates that of white crown glass simply having a greater absorption of the visible spectrum and, therefore, giving a greater protection against glare. A theoretically perfect glare-absorptive lens would be one with
1181 approximtely the same ultra-violet absorption as white crown glass but with a greater degree of neutral absorption of the visible spectrum than white crown glass.

2. Increased Visual Acuity

Because Soft-Lite Lenses provide uniform and sufficient absorption, even in the lightest shades, in many cases they have also been found to INCREASE VISUAL ACUITY. This is a natural

consequence, for when interference caused by over-brightness is removed evenly, the result is sharper vision, in increased vision acuity.

3. Pleasing Appearance

The eyeglass wearer susceptible to light strain is provided with a lens that is pleasing in appearance. Soft-Lites blend nicely with a natural complexion. They are considered by many to be the least conspicuous of any ophthalmic lens, including white lenses. A disfiguring, unflattering appearance, was one of the chief causes of the disappearance of nearly all the early tinted lenses. Their natural flesh tint is an important point of merit in Soft-Lites' favor.

4. Bausch & Lomb-Made

From the refractionist's standpoint, the fact that Soft-Lite Lenses are made exclusively by Bausch & Lomb, from the high quality ingredients to the finished product, is a positive guarantee as to their constancy in quality. It is extremely important that the various shades of an adsorptive lens be produced exactly the same yesterday, today, and always, in order that broken lenses can be matched perfectly at all times. The density of the various shades of Soft-Lites is controlled by the most accurate instruments and devices known to modern lens manufacture.

5. Protection

Much of the success of Soft-Lite Lenses may be attributed to the unwavering policy of the Soft-Lite Lens Company in restricting the distribution of these lenses to the most reputable optical channels, both wholesale and retail, thereby maintaining their position as a high-class prescription specialty and providing EFFECTIVE PROTECTION for all interested factors including the patients.

6. Four Densities

Soft-Lite Lenses are leaders in another respect. They are the only absorptive lenses available in four distinct densities, each density having a clear interrelation to the other density.

7. Complete Service

Surrounding and complimenting all the foregoing advantages and merits of Soft-Lite Lenses is that absolutely necessary accompaniment Complete Service. Soft-Lite Lenses are available, through conveniently located distributing sources, an all parts of the United States and the principal foreign countries.
1182 They are the only glare-absorptive lenses that offer a complete prescription service, being available in four shades and in all regularly used single-vision and bifocal forms.

8. National Consumer Advertising

The Soft-Lite Lens Company is carrying on a nation-wide Campaign of consumer advertising, designed to increase public consciousness of the importance of proper eye care. This campaign, based on a high ethical standard is being undertaken to accomplish five definite and desirable purposes.

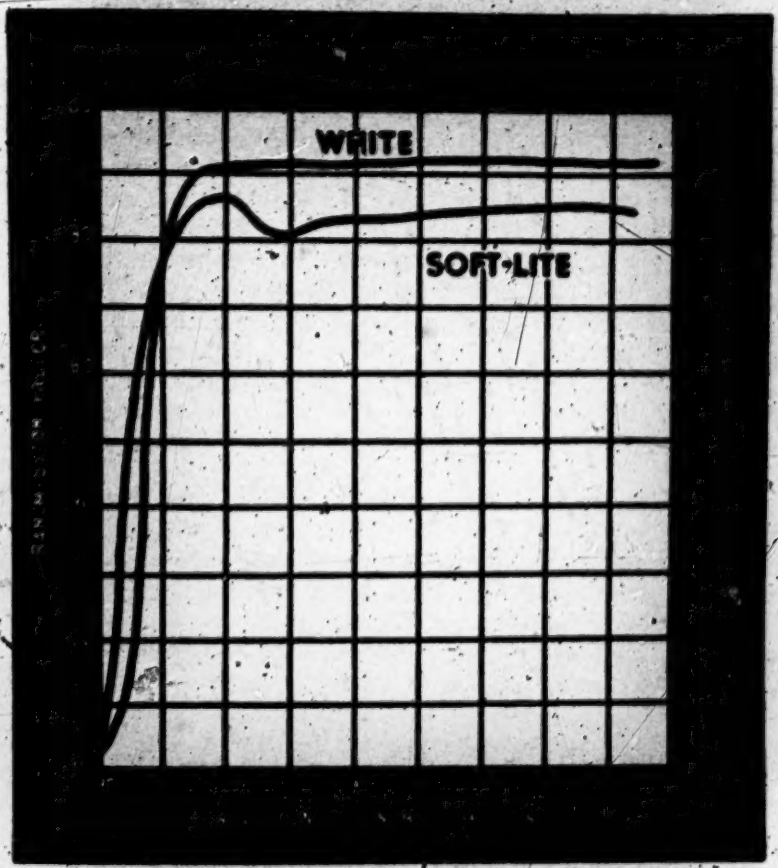
(1) To impress on the public the great importance of the proper care of the eyes, and their regular examination by a competent eye authority.

(2) To emphasize the imperative need of consulting only those practitioners who have an established reputation for competence.

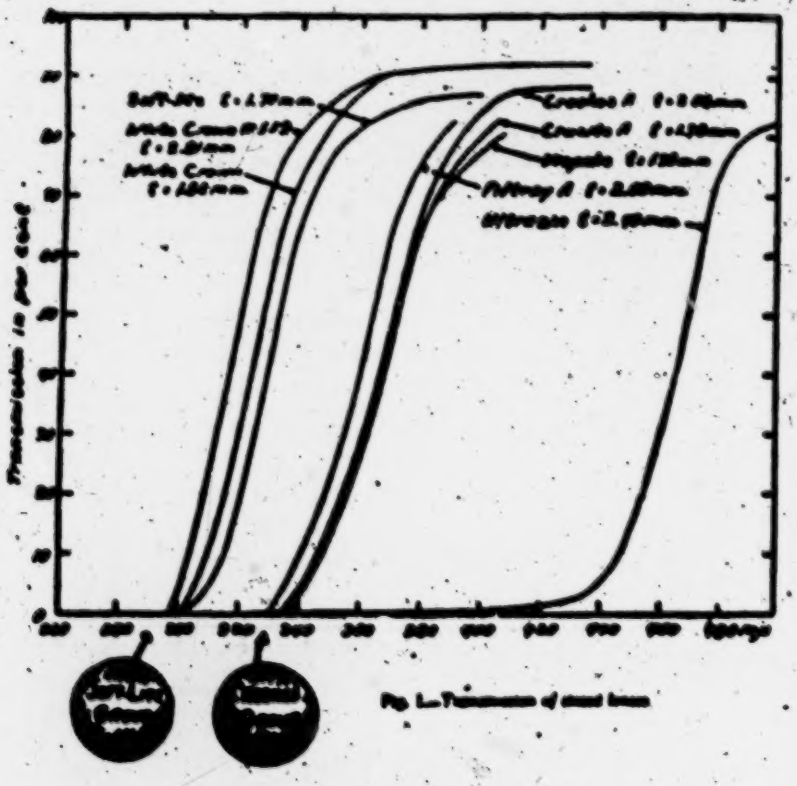
(3) To stress the importance of the use of eye-wear of recognized high quality.

(4) To promote consumer understanding of the greater comfort afforded by light-absorptive lenses, and the acceptance of Soft-Lite Lenses for this purpose, when lenses of this type are prescribed or recommended by eye-authorities.

(5) To increase the value of the Soft-Lite Sales Policy by informing the public that Soft-Lite Lenses are obtainable only from Soft-Lite Licensees. And to emphasize the important function rendered by the Soft-Lite Protection Certificate.



The transmission of Soft-Lite glass approaches that of white crown glass, with an even absorption through the visible spectrum. The transmission curves were prepared from tests conducted by the Electrical Testing Laboratories, New York.



Reproduced from Technologic Papers of The Bureau of Standards, No. 369

1184 *Exhibit 40*

GLARESTRAIN—AN IMPORTANT PROBLEM IN MODERN REFRACTION

SOFT-LITE LENS CO., INC., NEW YORK

1185 Glare and other eye-strains are becoming increasingly important problems to the refractionist. Accommodative asthenopia (eye-strain) is, of course, the most common of eye conditions that demands correction; and the particular kind of visual discomfort caused by Glare is perhaps the most prevalent of eyestrains existing under modern living and lighting conditions. Present-day indications are clearly to the effect that progressive refractionists, in increasing numbers, are paying more careful attention to modern methods of controlling light quantities and qualities.

The refractionist is constantly striving to conserve vision by prescribing lenses not only when the errors of refraction are obvious to the patient, but also when no complaints concerning vision are made. In the latter case, he knows by experience and training that a correction of a low degree of hyperopia or astigmatism, of which the patient may be unaware, is likely to have far-reaching effects upon the nervous system and to increase comfort and efficiency in work and recreation.

The extreme changes that civilization has imposed upon vision have caused a far greater prevalence of refractive errors. For this reason an ever increasing percentage of people find it
1186 necessary to visit the refractionist, because their eyes are not capable of fulfilling the exacting duties of modern life without showing signs of fatigue and ocular changes. Ophthalmic lenses are prescribed so that the effort involved in seeing may be lessened, and the fact that little or no discomfort is experienced without glasses is considered to be no indication that they are not necessary.

The same argument should properly be applied to absorptive lenses. A large proportion of ametropes pursue their daily tasks under conditions of lighting vastly different from those for which their visual organs were evolved and, both outdoors and indoors, light may become a source of discomfort in modern life. If a patient is able to do with less light and at the same time see as distinctly, and with no alteration in color values, light reduction will enhance his visual comfort. This statement is borne out by experiment and attested by the comfort and satisfaction experienced by nearly three million patients who have worn Soft-Lite Lenses.

Obviously, there must be a reason for the definite increase in visual acuity which has been evident in many cases in which Soft-Lite lenses have been prescribed and for the almost universally increased comfort which is produced by their prescription.

Actual experiments have shown that "eye-strain symptoms" produced by excessive accommodation are identical in kind to the eye-strain symptoms produced by excessive light strain on the light adjustment mechanism. The interrelationship of the action of the ciliary muscle and the sphincter pupillae we submit as the logical reason.

So closely related are the mechanisms of accommodation and pupillary reaction that no drug nor other means has been found which will relax accommodation without causing dilation of the pupil.

Certain areas, adjacent to each other, around the nuclei of the third cranial nerve stimulate these two muscles to contraction.

The muscles are precisely alike, except that the sphincter pupillae are not quite so large as the ciliary muscles. The ciliary muscle encircles an area about 11 mm. in diameter. As accommodation is changed from minimum to maximum, this area changes only about .5 to 1. mm. Since we know that the diameter of the pupil changes from about 5 to about 1.5 mm., it is reasonable to believe that the sphincter pupillae, considering its smaller size, is innervated just about as much as the ciliary muscle.

All refractionists have long since agreed in hyperopic cases upon the importance of relieving the ciliary muscle from unnecessary stimulation. Investigation has proved that the use of neutral visible light absorption in the ophthalmic prescription relieves the light adjustment mechanism of some of the effort of adjusting the eye to changes in light intensities. Should it not be logical, therefore, to consider the control of the quantity of light entering the eye through the proper prescription of neutral absorptive lenses?

1187 In the majority of myopic cases neutral absorption has been found to produce more comfortable vision and more clearly defined images, and this condition has been well proved by experience.

A proper diagnosis for the absorption element in the prescription is, of course, necessary. Such a diagnosis is available through the simple subjective test made with the Soft-Lite Trial Case Accessory or with Soft-Lite lenses in trial rings.

SUGGESTED PROCEDURE FOR DIAGNOSIS FOR ABSORPTION

After the refraction is complete and the correction is still set up in the trial frame or in the refractor head, introduce:

First the #1 shade and then the darker shades in order before the trial correction with either the Soft-Lite Trial Case Accessory or Soft-Lite trial rings and carefully note the patient's reaction to the letters on the chart in exactly the same way that his reaction is noted to the use of the other elements in the correction. Inquire whether the patient notes an increase in the detail or in the ease of reading characters on the chart; whether no difference is noted or whether a reduction is noted.

Where the reaction is definitely positive Soft-Lite #1 is, of course, indicated because of the increase in visual acuity or increase in comfort which is evident. Where the reaction is neutral, Soft-Lite #1 may safely be prescribed on the basis of the conservation of energy and more comfortable vision which is produced.

In the case of negative reaction, of course, Soft-Lite #1 is contraindicated, and in such cases should not be prescribed.

It is obvious that by this method Soft-Lite lenses may safely be prescribed.

This test should be made in addition to the other indications by which you are guided in regard to the patient's tolerance to light, and particularly by the case history.

Soft-Lite lenses have been found to increase the visual acuity of a substantial percentage of the patients of many refractionists who have consistently included the glare test made with the Soft-Lite Trial Case Accessory in their routine examination. This improvement in visual acuity is undoubtedly produced through the reduction of the halations of light on the object of regard, cutting down the circles of diffusion on the retina—thereby making the object appear sharper in detail.

It is well to remember, also, that Soft-Lite lenses have a preventive function to perform just as much as they may be considered to have a corrective one.

Cases showing a neutral reaction have been benefited through the additional comfort of the neutral light-reducing element of Soft-Lite glass introduced in the prescription.

It should be noted particularly that, from many case records on file, occupational use or specialized conditions of lighting, both outdoors and in, indicate clearly the use of darker shades
1188 of Soft-Lite. Careful questioning of the patient often discloses special lighting conditions which must be taken into account to render to the patient the maximum comfort under the particular conditions to which the patient's eyes are subjected. This part of the examination serves to establish the refractionist not only as an authority, but indicates gratifyingly his complete interest in the case and his fitness to prescribe for it.

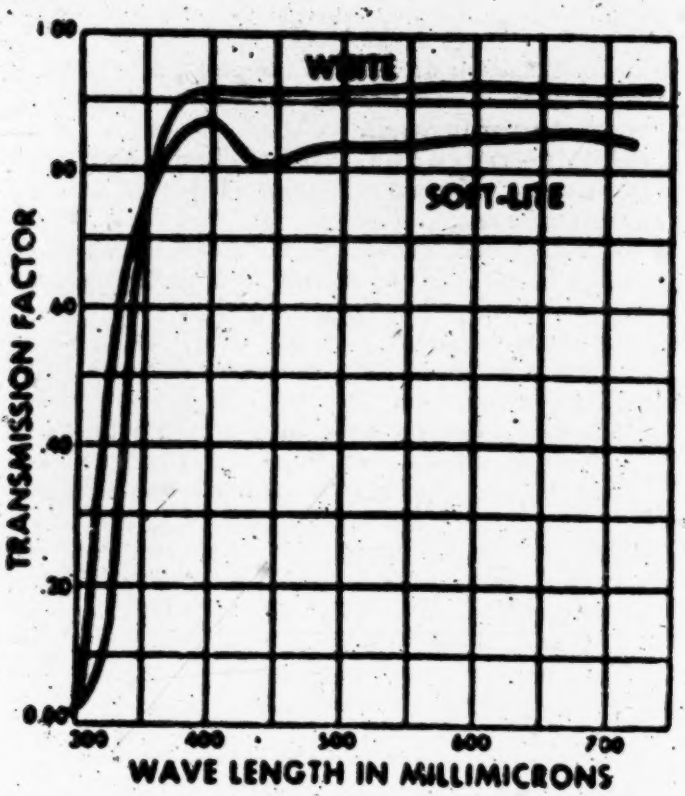
If the patient is engaged in work requiring rather intense use of the eyes, such as most office and industrial work, or if the patient during the daytime lives and works under artificial illuminaiton, then, with a positive test of this sort the Refractionist should prescribe Soft-Lites just as surely as he should prescribe a certain sphere or cylinder if his findings indicated such a correction as a need for greater comfort to his patient.

The refractionist recognizes the importance of this element in the complete examination routine and, fortunately, finds greatest satisfaction in the use of a control medium which in all respects is similar to white crown glass except that it *modifies* the passage of visible radiation. The medium which best fits this requirement

and which has been proved eminently satisfactory for over a quarter of a century is the Soft-Lite lens.

In support of the statements concerning the value of neutral transmission the statement of W. Stewart Duke-Elder in his book "The Practice of Refraction" is pertinent:

"In most of these cases, and in all of them where the eye itself is healthy, the ideal glass is that which shuts off as little of the light as is necessary, and which cuts it off throughout the spectrum uniformly, so that colour schemes are interfered with as little as possible."



The chart, herewith, showing the similarity of the Soft-Lite absorption curve to that of white crown glass, is of importance in this connection.

Controlled manufacture exclusively for the Soft-Lite Lens Company by Bausch & Lomb "from the sand to the finished lens" is a guarantee of uniformly high quality. And the protective sales policy initiated and vigorously maintained by the Soft-Lite Lens Company manifests that all ethical and commercial rights are amply protected.

1189 Soft-Lite Lenses have been the international standard of glare-absorptive lenses for over twenty-five years. An ever-widening use in every part of America, and in much of the rest of the world, has given Soft-Lite Lenses an unquestioned prestige. We sincerely believe that such a record is ample background for our statements concerning the merits of Soft-Lite Lenses, and justification for their use where scientific and correct glare reduction is indicated by the examination and occupational needs. Following are a few features that have helped them attain and maintain the position they enjoy today.

1. They provide a neutral and nonselective reduction of the visible spectrum and thereby reduce glare.

2. They provide even transmission throughout the visible spectrum. The Soft-Lite transmission curve follows closely the transmission curves of white crown glass.

3. Soft-Lite Lenses are not habit forming because of their neutral transmission. There is no distortion of color perception. The image is seen in its true color values.

4. In addition to their glare-reducing features, Soft-Lite Lenses possess an attractive cosmetic quality—they are pleasing to see as well as wear. Delicately flesh tinged, they are less conspicuous than ordinary white lenses and blend pleasantly with the tones of the wearer's face.

5. They are available in four controlled degrees of absorption. Soft-Lite Lenses maintain the same appearance in all four shades—differing only in color density and degree of absorption.

6. Available in a complete lens service—single vision and bifocal. Wherever a glare reducing lens is required, Soft-Lite Lenses meet every prescription need. They are available in both corrected (Orthogon) and uncorrected (Balcor) (50) Series, and in most of the regularly used types of bifocals.

7. Bausch & Lomb manufacturing and research facilities guarantee uniformity and tenacity of pigmentation. Quality is assured by the characteristically exacting care in every manufacturing step "from sand to finished product" in one of the world's leading optical institutions.

1197 *Exhibit 42*

SOFT-LITE. DISTRIBUTORS

Atlas Optical Company, Inc., New Orleans, La.
Bartels Optical Company, Chicago, Ill.
Belgard, Inc., Chicago, Ill.
Belgard-Spero, Inc., Chicago, Ill.
N. P. Benson Optical Co., Inc., Minneapolis, Minn.
Berks Optical Company, Reading, Pa.

Blue Grass Optical Co., Lexington, Ky.
Boll & Lewis Optical Co., Chicago, Ill.
Bradley Optical Company, Los Angeles, Calif.
Brent Optical Company, Altoona, Pa.
Burleigh Optical Company, Tilton, N. H.
Charles E. Carlson, Inc., Brooklyn, N. Y.
Central States Optical Co., Chicago, Ill.
City Optical Company, Wilmington, N. C.
Clinton Optical Company, Rochester, N. Y.
Colonial Optical Company, New York City.
Connecticut Optical Co., Waterbury, Conn.
Dalton-Webb Optical Co., Toledo, Ohio.
Dand O & Fadden, Scranton, Pa.
De Wein Optical Company, Buffalo, N. Y.
Diederich Optical Co., Inc., Los Angeles, Calif.
Dow Optical Co., Chicago, Ill.
Edelstein Bros., Syracuse, N. Y.
B. K. Elliott Company, Pittsburgh, Pa.
The Fort Wayne Opt. Co., Fort Wayne, Ind.
Fox Optical Co., Indianapolis, Ind.
Louis Friedlander, Inc., New York City.
Geneva Optical Co., Geneva, N. Y.
The Gracy-Wolf Opt. Co., Akron, Ohio.
Gregory Optical Co., Jackson, Michigan.
Joseph Greiff, Inc., Brooklyn, N. Y.
Henry Hennessey, Inc., New Orleans, La.
A. E. Holden, Houlton, Me.
Houchin Optical Co., Newark, N. J.
The Hilbert Optical Co., Baltimore, Md.
Hubbard-Leslie Optical Co., Toledo, Ohio.
Hygrade Optical Co., Inc., New York City.
Jenkel-Davidson Opt. Co., San Francisco.
Johnston Optical Co., Detroit, Mich.
F. W. King Optical Co., Cleveland, Ohio.
Kirstein Optical Co., Rochester, N. Y.
L. H. Kosh & Co., New York City.
Lehmann Optical Co., New York City.
Robert Levin, Inc., New York City.
J. E. Limeburner Company, Philadelphia, Pa.
Linden Optical Company, Allentown, Pa.
McClenaghen Optical Co., Philadelphia, Pa.
McIntire, Magee & Brown Co., Philadelphia, Pa.
F. H. McGary Optical Company, Bangor, Maine.
McLeod Optical Company, Inc., Providence, R. I.
Miller Optical Company, Chicago, Ill.
Milwaukee Optical Mfg. Co., Milwaukee, Wisc.

1198 August Neuse & Company, New York City.
Newman Brown Optical Co., Inc., Buffalo.
Niagara Optical Company, Buffalo.
North Star Optical Co., New York City.
Philadelphia Optical Co., Philadelphia.
Phoenix Optical Company, Bay City, Michigan.
Potter & Schnackenberg, New York City.
Quinton Duffens Optical Co., Topeka, Ks.
Reading Optical Co., Reading, Pa.
Reese Optical Co., Mansfield, Ohio.
Riggs Optical Company, Chicago, Ill.
Riggs Optical Company, San Francisco, Calif.
Schroeder-Miller Optical Co., Chicago, Ill.
Schulte Optical Co., Detroit, Mich.
Schulte & Fox Opt. Laboratory, Detroit, Mich.
The Seidel Optical Service, New York City.
Service Optical Company, Lewiston, Maine.
Silbert Optical Company, Buffalo, N. Y.
Southeastern Optical Co., Richmond, Va.
Southeland-Helms Co., Charlotte, N. C.
Southwest Optical Co., Los Angeles, Calif.
George W. Spratt Opt. Co., Los Angeles, Calif.
G. & F. Stannard, Cincinnati, Ohio.
M. E. Stern, Inc., New York City.
Superior Optical Co., Los Angeles, Calif.
Twin City Optical Co., Minneapolis, Minn.
Twin Ports Optical Co., Duluth, Minn.
Uhlemann Optical Co., Chicago, Ill.
Wallace Optical Co., Lansing, Mich.
Walman Optical Co., Minneapolis, Minn.
Western Optical Co., Salt Lake City, Utah.
White Haines Optical Co., Columbus, Ohio.
Wilson & Halford Opt. Co., Boston, Mass.
Winchester Optical Co., Horseheads, N. Y.

1199 *Exhibit 43*

SOFT-LITE LENS COMPANY, INC

STOCK LICENSE

1200 This agreement, made and entered into this _____ day of _____ 193 , by and between the Soft-Lite Lens Company, Inc., of 745 Fifth Avenue, New York, N. Y., Licensor, and _____, of _____, Licensee, witnesseth:

Whereas Licensor is the sole and exclusive owner of Soft-Lite lenses and lens blanks, and Licensee is desirous of obtaining a license authorizing the dispensing and sale of said Soft-Lite lenses and according it privileges under said license and has ordered lens stock in full in accordance with the minimum requirements,

Now, Therefore, it is agreed as follows:

1. Licensor hereby grants Licensee a revocable, non-exclusive and non-transferable license to purchase said Soft-Lite lenses and lens blanks from a licensed Soft-Lite Distributor or Class "A" Wholesale Licensee and to resell said lenses at prices prevailing in the locality in which Licensee conducts his practice or business.

2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, agreeing not to sell or deal in any lens similar in tint, color, or shade to Soft-Lite lenses. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer.

3. Licensor agrees to furnish sales promotional assistance in the form of letters, bulletins and advertising materials and sales aids of professional and scientific nature designed to help increase the use and sale of Soft-Lite lenses by the Licensee.

4. Licensor will provide the Licensee with a Dispensing License Certificate suitable for display in his office or establishment. Said Certificate shall at all times be the property of the Licensor and shall be delivered up and returned to the Licensor immediately upon the termination of the license.

5. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days that it elects to terminate this license, and at the expiration of said period this license shall then terminate; but the termination of this license shall not relieve the Licensee from the payment of any moneys due and payable to Licensor or to parties holding a license from Licensor or from any other obligations due to be performed hereunder at or after the time of said termination.

In Witness Whereof, the parties hereunto have set their hands and seals on the day and year first above written.

Applicant's Signature _____

Distributor's Endorsement _____

(Soft-Lite Distributor or Wholesale Licensee Recommending Applicant)

By _____

(For Soft-Lite Distributor or Wholesale Licensee)

Salesman _____

Accepted: _____

Date

SOFT-LITE LENS COMPANY, INC.

By _____

1201 *Exhibit 44*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses—Greater Comfort—Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

FEBRUARY 21, 1939.

Soft-Lite Wholesalers' Salesmen & Branch Managers:

IMPORTANT

Please do this today!

Destroy your present supply of Soft-Lite Stock License blanks and use this

New Application Form

when signing up new Soft-Lite Stock Licensees.

The operation of the new system is simple—(note form is in triplicate),

1. Fill in upper half of application.
2. Have applicant read both the copy of the License, as shown on the cover, and also the application.
3. Have him sign in the space provided.
4. Fill in complete Business Information.
5. Sign and send all copies to your office.

Your office upon approving, will sign and send original and duplicate copies to the Soft-Lite Lens Company, New York.

After approval the Soft-Lite Lens Company, will send direct to the applicant a License identical in wording to that shown on the cover of your application book.

There has been a similar change in the set-up of the Soft-Lite Prescription License form but no change has been made in the method of recommending new Prescription Licensees. The regular post-card is still to be used.

We thank you for your cooperation in putting this plan into effect.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.
A. F. IMMIG.

AFImmig: GS.

1202 Name _____ Application for Soft-Lite
Address _____ Registered Dispensing License
City & State _____ Under Stock Classification

The undersigned hereby makes application for a Soft-Lite Registered Dispensing License under the classification of Stock Licensee with the rights and privileges granted to Licensees thereunder, and agrees, in the event a license is granted to the applicant as a result of this application, to observe strictly the terms of the license, with which terms the applicant is familiar. Applicant has simultaneously submitted an order for Soft-Lite lens stock in accordance with the requirements for issuance of such license. The applicant understands that the Soft-Lite Lens Company, Inc., may reject this application and, in the event a license is granted to the applicant, as a result of this application, that the Licensor may thereafter cancel the License with or without cause on thirty (30) days' written notice.

If this application is accepted the applicant requests the Soft-Lite Lens Company, Inc., to supply such of the promotional material checked below as is available.

( ) 1—Folders . . . 500 imprinted Soft-Lite Folders.
( ) 2—Trial Case Accessory . . . Fitted with Plano Soft-Lite Lenses.
( ) 3—Soft-Lite Sample Lens Set . . . Containing samples of the four S-L shades.
( ) 4—Window Displays . . . Various displays featuring Soft-Lite Lenses.
( ) 5—Window Display Booklet . . . The title "How to Use Your Windows," explains the contents. A handbook on preparing effective, salesmaking window displays.
( ) 6—Mailing List Booklet . . . "How to Use Your Mailing List." Extremely valuable information on the preparation and use of mailing lists.
( ) 7—Letter Copy . . . "How to write good letters"—a new book of information and suggestion by one of America's foremost letter-writing authorities.
( ) 8—Newspaper Advertising Copy . . . One and two column ads featuring Soft-Lites. Attractively illustrated, complete with copy and mats for the newspaper.
( ) 9—Case Labels . . . 100 attractively finished labels to be placed in cases containing Soft-Lite glasses.
( ) 10—Radio Copy . . . Short dialogue scripts emphasizing the need for and use of Soft-Lite lenses.

Imprint desired: _____

_____

_____

Date _____ Applicant's Signature _____

To be filled in by Representative recommending application

BUSINESS INFORMATION

The following information must be submitted with each application before it can be given consideration. Please check.

M. D.	O. D.	DISP.	Soft-Lite Orthogon User		Location				Equipment	
					Office	Store				
			Stock	Rx		Own	Dept.	Jewelry	Surface	Edging

Previous Address _____

Previous Licensee at _____ Identification Plaque # _____

Estimated Total yearly lens usage _____

Estimated yearly S-L usage _____

Present or possible user of the Promotional material checked below.

( ) Cleaner Cloths
( ) Cleaner Cloth Mailers
( ) Memorettes
( ) Folders
( ) Window Cards
( ) Counter Cards
( ) Hi-Spot Displays
( ) Fitting Table Pads
( ) Test Books
( ) Newspaper Copy
( ) Radio Talks
( ) Letter Copy
( ) _____
( ) _____

Submit samples of Advertising—Circulars—Newspapers—Programs, etc.

Business Practices: ( ) 1—Does he maintain prevailing local price schedules?
( ) 2—Does he feature and use first-quality merchandise?
( ) 3—Does he charge examination fee?
( ) 4—Does he indulge in installment advertising where prices are quoted in any form?

Date _____ _____
Signature of representative recommending application

Date _____ Approved _____
Soft-Lite distributor or wholesaler

By _____

1203 *Exhibit* 45

SOFT-LITE LENSES

Made by the Bausch & Lomb Optical Company exclusively for the Soft-Lite Lens Company, Inc., New York, Toronto, London

REGISTERED DISPENSING LICENSE

(Stock)

Whereas Soft-Lite Lens Company, Inc., of No. 745 Fifth Avenue, New York, N. Y., hereinafter referred to as "Licensor," is the exclusive producer of Soft-Lite lenses and lens blanks and is the sole and exclusive owner of the trade-name and trade-marks used in connection with the distribution and sale of said lenses and blanks, and

Whereas _____ of _____, hereinafter referred to as "Licensee," has duly submitted to Licensor a written application for authority to dispense and sell said Soft-Lite lenses and lens blanks; and

Whereas by said written application (the terms of which are hereby made a part of this license), the said Licensee has undertaken the obligations contained therein:

Now, therefore, this license is issued upon the following additional terms and conditions:

1. Licensor hereby grants to Licensee a revocable, nonexclusive and nontransferable license to purchase said Soft-Lite lenses and lens blanks from any of the duly appointed Soft-Lite Distributors or Class "A" Wholesalers and to resell said lenses at prices prevailing in the locality in which Licensee conducts his practice or business.

2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses; it being understood that the promotion of the sale of other lenses of a similar color, or the substitution of other lenses for Soft-Lite lenses, is detrimental to the good name and reputation of Soft-Lite lenses and may adversely affect the prestige thereof. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer.

3. Licensor agrees to furnish sales promotional assistance, advertising materials and sales aids of professional and scientific nature designed by Licensor to help increase the use and sale of Soft-Lite lenses by the Licensee.

4. Licensor, simultaneously with the issuance of this License will provide the Licensee with an Identification Plaque, bearing serial number ____. Said Identification Plaque shall at all times by the property of the Licensor and shall be returned to the Licensor immediately upon the termination of the license.

5. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days, to the effect that it elects to terminate this license, and at the expiration of said period this license shall then terminate; but the termination of this license shall not relieve the Licensee from the payment of any moneys due and payable to Licensor or from any other obligations due to be performed hereunder at or after the time of said termination.

In Witness Whereof, the Soft-Lite Lens Company, Inc., has caused this License to be executed by its duly authorized officer on the _____ day of _____ 19__.

SOFT-LITE LENS COMPANY, INC.

By _____

1203–A SOFT-LITE LENSES

REGISTERED DISPENSING LICENSE

(Stock)

1204 *Exhibit 46*

SOFT-LITE LENS COMPANY
119 West 57th Street
NEW YORK CITY

MAY 17, 1933.

This letter contains an announcement of great importance—the inauguration of the Soft-Lite Registered Dispensing License. It adds so much additional salability to the Soft-Lite proposition that we will have in the new Soft-Lite set-up the best lens proposition available to the retailer who realizes that he must give his patients better service and quality merchandise, and that he must make a legitimate, ample and protected profit.

We considered the desirability of extending the Soft-Lite Licensee plan to prescription accounts from every angle, and discussed it with many of our customers, both wholesale and retail, before we actually decided to go ahead with it. The uniform reaction was that the additional protection which the Registered Dispensing License would provide was all that was necessary to have Soft-Lites completely fill the retailers' needs.

It has many sales advantages. In addition to the information contained in the attached copy of the bulletin being sent to Soft-Lite wholesalers' salesmen and branch managers, there is one very definite advantage that, obviously, cannot be mentioned in the bulletin. That is, that this new Soft-Lite set-up will renew the salesman's interest and enthusiasm in the Soft-Lite proposition and make it necessary for him to again feature Soft-Lites to all the customers from whom he expects to receive Soft-Lite business. We will follow up the bulletin to salesmen with further information and sales suggestions in an edition of Soft-Lite "Slants" which will be issued shortly. The bulletin to salesmen will be mailed on Thursday, May 18th.

We believe that we are allowing sufficient time—more than 60 days—to enable your salesmen to contact all your customers before the Registered Dispensing Licenses are issued officially.

Until that time Soft-Lites will continue to be sold as they
1205 are now, but on and after August 1st only Registered Dispensing Licensees will be privileged to purchase Soft-Lite lenses or blanks at the regular stock or prescription prices. After that date prices to non-licensees (which includes wholesalers not on the Soft-Lite wholesale list) will be Double the regular stock or prescription prices. All Soft-Lite wholesalers will be expected to observe these regulations explicitly. So that this plan will operate successfully, it will be necessary that you be very particular to see that the Soft-Lite Protection Certificate is included in all of your shipments of Soft-Lites to your customers on either stock or prescription orders.

The enclosed set of sample forms, to which an information sheet is attached, will give you complete information regarding the routine handling of the license and forms incidental to this new plan. File boxes will be available for filing the Licensee Registry cards. If there is anything that is not absolutely clear, we shall be glad to give you further information by return mail.

Please advise us by return mail the approximate number of Dispensing Licenses you will require, bearing in mind that the Licensee signs only one copy. It is of great importance to you, and to us, that your salesmen understand the importance of carefully and thoroughly contacting all of their customers on this new policy without delay. If it is properly carried out it means a substantially increased permanent Soft-Lite sales volume. This is certainly well worth any effort to obtain.

We suggest that you either discuss the plan personally with your salesmen or that you write each salesman and branch man-

ager who regularly contacts the trade impressing him with the importance of properly putting over this new Soft-Lite sales policy.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

RGLandis/LCK.
Encl.

1206 *Exhibit 47.*

SOFT-LITE REGISTERED DISPENSING LICENSE INFORMATION SHEET

Attached is a complete set of the forms to be used in conjunction with the Soft-Lite Registered Dispensing License. Please read this carefully and inspect all of the forms so that you will be thoroughly familiar with this new sales plan.

Form A—The Registered Dispensing License. This is to be signed by the prospective Licensee, on one copy only, on the bottom two lines. We suggest that you fill in the date, name, and address of the customer at the top, making it as legible as possible, before presenting it for his signature.

For your information:

Paragraph one provides for maintenance of the Soft-Lite minimum retail prices which prevail in the locality in which the Licensee is established.

Paragraph three contains the important provision of limiting Soft-Lite Registered Dispensing Licensees to the sale of Soft-Lite lenses to the consumer only. This is designed to prevent the sale or exchange of Soft-Lite lenses between Licensees and nonlicensees.

Paragraph six, which states that Licenses may be terminated at any time, provides the necessary flexibility so that Licenses may be cancelled where necessary.

This is a dispensing license and it is only necessary, therefore, for retailers who actually dispense Soft-Lite lenses at retail to sign the license. This, of course, includes all Optometrists, retail Dispensing Opticians, and Oculists who do their own dispensing. It is not necessary that Oculists who dispense through either a retail or wholesale dispenser be licensed. Furthermore, because it is a dispensing license, all present established Soft-Lite Stock Licensees and all Orthogon Franchise Dealers who desire to use Soft-Lite lenses must sign this Registered Dispensing License in addition to the Soft-Lite License or Orthogon Franchise which they have signed previously. (This is because the present Soft-

Lite Stock License and the Orthogon Franchise are essentially licenses to purchase, not to sell.)

1207 Form B—Copy of Appointment Letter sent direct to Licensees if and when their License has been accepted.

Form C—Advertising Data Card. It is most important that these be filled out completely so that we have the information necessary to enable us to render a thorough advertising service to the Licensee. It will require only a minute or two for you to fill out this card. Attach it to the signed License, send both to your main office, where they, in turn, will be forwarded to us. Positively no Licenses will be accepted that are not accompanied by one of these Advertising Data Cards.

Form D—Licensee Registration Card. These will be filled out in our office and a duplicate copy supplied to the Wholesaler's main office (and branch offices, if necessary) through whom the License was received.

Procedure in Signing and Appointing Registered Dispensing Licensees: Your customer will sign one copy of the Registered Dispensing License. You will then fill in the information on the Advertising Data Card, attach it to the signed License, send both Card and License to your main office, and from there it will be mailed to us. If, after investigation, we accept the License, it will be signed by an officer of the Soft-Lite Lens Company and filed, together with the Advertising Data Card, in our files. The appointment letter will then be sent to the Licensee advising him that his License has been accepted and that he has been duly appointed a Soft-Lite Registered Dispensing Licensee. The Licensee Registry Card will be sent to the Soft-Lite Wholesaler, notifying him that the License has been accepted. You should make it a point to obtain the names of all new Licensees as they are received.

Termination Procedure: If it is found necessary to terminate a License, in accordance with the provisions of paragraph six of the License, a letter will be sent to the Licensee with a copy to the Soft-Lite Wholesaler through whom the License was originally received, notifying the Licensee that his License will be terminated 30 days after the date of the letter. At the expiration of the 30-day period a notice will be sent to all Soft-Lite Wholesalers in the territory advising them that the License has been terminated and directing that the Registry Card be removed from their files.

We have attempted to keep the routine as outlined above as dignified and as simple as possible. Please be sure that you understand it thoroughly. If you require any additional information we suggest that you take it up at once with your main office.

SOFT-LITE LENS COMPANY, INC.

1208 *Exhibit 48*

SUPPLEMENT TO SOFT-LITE SLANTS

MAY 18, 1933.

To Soft-Lite Salesmen:

A NEW "SLANT" ON SOFT-LITE—OF GREAT IMPORTANCE

The importance of the new feature in the Soft-Lite sales policy announced in this bulletin cannot be over-emphasized. It is directly in line with our continual efforts to protect the legitimate user of Soft-Lite lenses and adds tremendous salability to the Soft-Lite proposition!

It is the Soft-Lite Registered Dispensing License. This license will be issued to all retail users (both stock and prescription) of Soft-Lite lenses who conduct their business in the highly ethical manner which has always been associated with Soft-Lite Licensees, and who are willing to observe strictly the provisions of the Soft-Lite Registered Dispensing License. A complete set of sample forms is enclosed together with complete information and instructions for their use. Please inspect these carefully and read the information sheet thoroughly so that you will be fully informed on all of the details of the registered license plan. Blank licenses and advertising data cards are now being supplied to Wholesalers' main offices so that the solicitation of registered dispensing licensees may begin at once. After a period of approximately sixty days has elapsed (August 1st), which should allow ample time for thorough coverage of all territories, the Registered Dispensing License will be put into effect formally and will be announced in the Trade Journals.

On and after that date, no Soft-Lite lenses or blanks in any form will be sold to other than Registered Dispensing Licensees at the prevailing Soft-Lite stock or prescription prices.

Prices to nonlicensees after August 1st will be arrived at by doubling the present uncut or prescription list prices. This will apply both to wholesalers as well as retailers. Obviously this will result in absolutely controlled Soft-Lite distribution, thus making possible a most rigid maintenance of all the requirements of the Soft-Lite sales policy.

A handsome Identification Certificate, on which the Soft-Lite Protection Certificate will be reproduced, will be sent to all
1209 registered dispensing licensees approximately thirty days after their license has been accepted. This will enable the Licensee to impress upon his customers the importance of ob

taining Soft-Lite lenses only in an establishment displaying this certificate and one which delivers a Soft-Lite Protection Certificate with the glasses. This will protect Licensees against substitutions, by their competitors, of imitations of Soft-Lites at less than the Soft-Lite minimum retail prices.

Other plans for increasing the effectiveness of the Protection Certificate are being prepared, which include new window display material, newspaper advertising copy, and other means of featuring the Protection Certificate to the consumer.

The sales promotional campaign (mentioned in Paragraph 4 of the license) will be complete and very helpful in increasing sales both to the licensee and by him to the consumer. To back up your direct sales work on licensees, a carefully planned direct-mail campaign will be sent to all registered licensees at regular intervals throughout the year. A bulletin will also be sent to registered licensees periodically. This bulletin will present a fine opportunity to give licensees many timely and helpful suggestions that will enable them to improve their own business. At the same time it will enable us to impress upon them the importance of presenting the Protection Certificate to their customers, and educate them in the proper way of prescribing and selling Soft-Lites.

Now let's get right down to "brass tacks" and see what kind of a Soft-Lite picture this gives us to work with. In the first place, in order to put this Registered Dispensing License over properly, it is necessary to contact all of your present or prospective Soft-Lite customers again. We have an entirely new story to offer, and a set-up which gives the retailer 100% of what he needs to conduct a profitable and sound business. * * *

1. Product: The only neutral glare absorptive lense which does not have the disadvantage of an undue absorption of ultra-violet radiation nor disturbance of the effective power of the prescription, available in four degrees of absorption, and in a complete lens service. Because it is an ophthalmic glass merely denser to the passage of visible light than ordinary white crown glass, it can be and should be prescribed for the great majority of patients requiring correction.

2. Dealer Helps: A complete, attractive, and effective business builder service will be available to Soft-Lite registered dispensing licensees only.

1210 3. Profit: Offers both the stock and prescription user one of his few opportunities of increasing his service to the patient and, thereby, ethically making an adequate profit.

4. Protection: It is unnecessary to mention the vital need of the better type of retailer for a product on which he can make a

legitimate profit and yet be absolutely protected from cut-price competition. The addition of the Registered Dispensing License to the Soft-Lite sales policy insures the maintenance of Soft-Lites as one of the few available profitable, protected prescription specialties. In addition, Soft-Lites are identifiable and, therefore, the greater the proportion of the Soft-Lite Licensee's lens business which can be placed on a Soft-Lite basis, the better will his position be both financially and from the standpoint of future stability.

What else could your customer ask for? With this new Soft-Lite set-up, we can sincerely feel that we are offering the retailer something that he needs. We have something that he should buy—and it doesn't cost him a cent! It is bound to substantially increase your Soft-Lite sales and your customers' Soft-Lite sales.

You've heard a lot about "New Deals" lately. Here's one for You—and for your customer. We've given you the tools—dig in—make it a bigger and more profitable deal for you and for your house. Let's get behind this with all the enthusiasm that helped to make Soft-Lites a success when they were first introduced.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

RGLandis/DR.

1211 *Exhibit 49*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows, Soft-Lites Soften the Light

119 West 57th Street

NEW YORK CITY

(Letter to those who did not sign.)

SEPTEMBER 27, 1933.

To Orthogon Franchise Dealers:

GENTLEMEN: The Soft-Lite Registered Dispensing License becomes effective on October 16th. After that date prices to other than Registered Dispensing Licensees, on Orthogon Soft Lites as well as regular series, will be 100% higher than the regular prevailing Soft-Lite list prices. Your ability to purchase Soft-Lites at the prevailing prices gives you a distinct advantage.

Two inserts announcing this change are enclosed. They should be pasted in your Soft-Lite stock and prescription price lists immediately.

As an Orthogon Franchise Dealer we feel certain that you will appreciate the added and more effective protection that you will receive by the addition of the Registered Dispensing License to the Soft-Lite sales policy.

To enable us to carry out this policy uniformly and to enforce its provisions to their fullest extent, for the protection of all Soft-Lite users, we ask you to sign the enclosed copy and return it to us at your earliest convenience. Please fill in and return the Advertising Data Card enclosed also. The information on this card, which we will keep in our files, will enable us to prepare better and more valuable sales aids for your use.

With best wishes,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

RGLandis—D.

1212 *Exhibit 50*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows, Soft-Lites Soften the Light
119 West 57th Street
NEW YORK CITY

(This letter was sent to those already signed.)

SEPTEMBER 27, 1933.

To Orthogon Franchise Dealers:

GENTLEMEN: The Soft-Lite Registered Dispensing License becomes effective on October 16th. After that date prices to other than Registered Dispensing Licensees, on Orthogon Soft-Lites as well as regular series, will be 100% higher than the regular prevailing Soft-Lite list prices. Your ability to purchase Soft-Lites at the prevailing prices gives you a distinct advantage.

Two inserts announcing this change are enclosed. They should be pasted in your Soft-Lite stock and prescription price lists immediately.

As an Orthogon Franchise Dealer we feel certain that you will appreciate the added and more effective protection that you will receive by the addition of the Registered Dispensing License to the Soft-Lite sales policy.

Your signed License has been received through our Distributors.

With best wishes.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.,
R. G. LANDIS.

R. G. Landis—D.

1213 *Exhibit 51*

SEPTEMBER 27, 1933.

To Soft-Lite Licensees:

GENTLEMEN: The Soft-Lite Registered Dispensing License becomes effective on October 16th. After that date prices to other than Registered Dispensing Licensees will be 100% higher than the regular prevailing Soft-Lite list prices. Your ability to purchase Soft-Lites at the prevailing prices gives you a distinct advantage.

Two inserts announcing this change are enclosed. They should be pasted in your Soft-Lite stock and prescription price lists immediately.

As a Soft-Lite Licensee we feel certain that you will appreciate the added and more effective protection that you will receive by the addition of the Registered Dispensing License to the Soft-Lite sales policy.

Because you are now a Soft-Lite Licensee, it is, of course, not absolutely necessary that you sign one of the new Registered Dispensing Licenses. However, to enable us to carry out this policy uniformly and to enforce its provisions to their fullest extent, for the protection of all Soft-Lite Licensees, we ask you to sign the enclosed copy and return it to us at your earliest convenience. Please fill in and return the Advertising Data Card enclosed also. The information on this card, which we will keep in our files, will enable us to prepare better and more valuable sales aids for your use.

With best wishes.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis—LCK.

1214 *Exhibit 52*

OCTOBER 12, 1933.

It is a pleasure to inform you that your Soft-Lite Registered Dispensing License has been approved and accepted. Your name has been placed on the Soft-Lite Registered Dispensing Licensee List and you are thereby entitled to the prices, privileges, and sales promotional service extended to Soft-Lite Registered Dispensing Licensees. Your Soft-Lite Wholesaler has been informed of the acceptance of your license.

The Soft-Lite Registered Dispensing License becomes effective on October 16th. After that date prices to other than Registered Dispensing Licensees will be 100% higher than the regular prevailing Soft-Lite list prices. Your ability to purchase Soft-Lites at the prevailing prices gives you a distinct advantage.

The Licensee Identification Certificate will be sent to you soon. This should be prominently displaced in your establishment to identify you as a Soft-Lite Registered Dispensing Licensee.

It is our desire to cooperate with you in every way possible that our association may be mutually helpful and profitable.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.,
——— ———, *President.*

NS/LCK.

1215 *Exhibit 53*

SOFT-LITE LENS CO., INC.
Soft-Lite Lenses—Greater Comfort—Better Appearance
Squibb Building, 745 Fifth Avenue
NEW YORK CITY

JULY 27, 1938.

To Soft-Lite Licensees:

With our consent, the Federal Trade Commission has issued an order requesting us to clarify the meaning of Paragraph #2 of the Soft-Lite Stock License and Paragraph #3 of the Soft-Lite Registered Dispensing License. In compliance with this request, we have issued the attached bulletin. The clarification of this paragraph does not involve any change in the fundamental Soft-Lite sales policy.

Soft-Lite Lenses have always been sold under a sales policy designed to protect the interests of Licensees and consumers. As heretofore, the license agreement restricts Licensees from promoting the sale of other lenses of appearance similar to Soft-Lite Lenses and from substituting other lenses when Soft-Lite Lenses are called for. This provision protects all Licensees by insuring against unfair competitive practices and protects the interests of consumers who, in many cases, are not able to differentiate between Soft-Lite Lenses and other lenses of similar appearance.

We recognize that our Licensees receive occasional requests for other absorptive lenses and we do not intend to restrict the sale of such lenses when specifically requested. However, in view of our protective sales policy, our extensive advertising program, and cooperative sales helps, Licensees will find it to their interest to concentrate on Soft-Lite Lenses.

We are sure that we may expect your cooperation.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.,
R. G. LANDIS, *Vice President.*

R. G. Landis: AS.

1216 *Exhibit 54*

SOFT-LITE LENS CO., INC.
Soft-Lite Lenses—Greater Comfort—Better Appearance
Squibb Building, 745 Fifth Avenue
NEW YORK CITY

JULY 27, 1938.

To Soft-Lite Licensees:

In connection with the Soft-Lite Licensee Agreement now existing between you and our company, in accordance with which you are authorized to sell and dispense Soft-Lite Lenses, we desire to clarify the paragraph reading as follows:

"Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite Lenses and further agrees to do nothing which may adversely effect the prestige of said lenses, agreeing not to sell or deal in any lense similar in tint, color, or shade to Soft-Lite Lenses. Said Soft-Lite Lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer."

This provision is to be construed as though the following paragraph were originally inserted in the License Agreement in place of the paragraph quoted above:

"Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite Lenses and further agrees to do nothing which may adversely affect the prestige of said lenses; it being understood that the promotion of the sale of other lenses of a similar color, or the substitution of other lenses for Soft-Lite Lenses, is detrimental to the good name and reputation of Soft-Lite Lenses and may adversely affect the prestige thereof. Said Soft-Lite Lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer."

We expect that you will be guided accordingly with respect to your future activities in connection with Soft-Lite Lenses.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.,
R. G. LANDIS, *Vice President.*

R. G. Landis: lck.

1217 *Exhibit 55*

SOFT-LITE LENS CO., INC.
SQUIBB BUILDING, 745 FIFTH AVENUE
NEW YORK CITY

Like Cathedral Windows, Soft-Lites Soften the Light

SEPTEMBER 6, 1938.

H. B. CANNON, O. D.
207½ W. Second St., Ft. Worth, Texas.

DEAR DR. CANNON: It is a pleasure to advise you that upon the recommendation of your Soft-Lite Wholesale Distributor your name has been placed on the list of Soft-Lite Registered Dispensing Licensees, as is indicated upon the enclosed Registered Dispensing Certificate. We are also making shipment of the promotion material requested by your Soft-Lite Wholesaler.

The Registered Dispensing License is designed to protect both your interests and ours, to the end that Soft-Lite Lenses may be a profitable and protected product, the use of which will benefit both you and your patients.

Cordially yours,

SOFT-LITE LENS COMPANY, INC.,
R. G. LANDIS, *Vice President.*

RGL: DS.

1218 *Exhibit 56*

SOFT-LITE LENS COMPANY, INCORPORATED

REGISTERED DISPENSING CERTIFICATE

1219 Certificate

made and entered into this 6th day of September 1938 by and between Soft-Lite Lens Company, Inc., of 119 West 57th Street, New York, N. Y., Licensor, and H. B. Cannon, O. D., of Ft. Worth, Texas, Licensee.

Whereas Soft-Lite Lens Company, Inc. (hereinafter referred to as the Licensor), is the sole and exclusive owner of "Soft-Lite" lenses and lens blanks and is the sole and exclusive owner of the right to manufacture, use and sell, and to grant to others the right to manufacture, use and sell in the United States lenses and lens blanks known as "Dualens," made under United States Letters Patent No. 1,332,410, and improvements thereon, and

Whereas H. B. Cannon, O. D., of Ft. Worth, Texas (hereinafter referred to as the Licensee), is desirous of obtaining a license authorizing the dispensing and sale of said "Soft-Lite" and "Dualens" lenses,

Now, therefore, it is hereby certified that said Licensee is hereby granted a revocable, nonexclusive, and nontransferable license to purchase "Soft-Lite" lenses and "Dualens" lenses from duly licensed "Soft-Lite" and "Dualens" Distributors or Class "A" Wholesalers, upon the following terms and conditions:

1. The Licensee agrees to sell "Soft-Lite" lenses at prices prevailing in the locality in which the Licensee conducts his practice or business.

2. The Licensee agrees to sell "Dualens" lenses at prices in conformity with those set out in a uniform schedule of prices to be furnished by Licensor to Licensee, which schedule may be changed from time to time by Licensor, and which shall be effective for such time as the Licensor shall determine.

3. Licensee agrees not to sell or deal in any lens similar in tint, color, or shade to "Soft-Lite" lenses, or to purchase, use, or sell any "Dualens" lenses covered by said Letters Patent or improvements thereon, except such as are purchased from a duly licensed "Soft-Lite" or "Dualens" Distributor or Class "A" Wholesaler of the Licensor, and Licensee agrees to use his best efforts to promote and further the use and sale of "Soft-Lite" and "Dualens" lenses, and further agrees to refrain from any activities that may be inimical to the prestige of any type of "Soft-Lite" or "Dualens" lenses.

4. Licensee agrees to sell said "Soft-Lite" and "Dualens" lenses only under the trade-names and trade-marks of the Licensor, and only to the consuming public, and hereby acknowledges the ownership by Licensor of the trade-names and trade marks relating to "Soft-Lite" and "Dualens" lenses and blanks.

5. Licensor agrees to furnish sales promotional assistance, advertising materials, and sales aids of a professional and scientific nature designed to help increase the use and sale of "Soft-Lite" and "Dualens" lenses by the Licensee.

6. Licensor will provide the Licensee with a Dispensing License Certificate suitable for display in his office or establishment. Said Certificate shall at all times be the property of the Licensor and shall be delivered up and returned to the Licensor immediately upon the termination of the License.

7. This License may be terminated and revoked at any time by the Licensor by serving upon Licensee a written notice of thirty days. Such termination and revocation, however, shall not relieve the Licensee from the payment of any moneys due and payable to

Licensor, or to other Licensees of the Licensor, or from any other obligations due to be performed hereunder at or after the time of said termination.

In witness whereof the Soft-Lite Lens Company, Inc., has caused this Certificate to be executed by its duty authorized officer on the day and year first above written.

SOFT-LITE LENS COMPANY, INC.
By R. G. LANDIS.

1220 *Exhibit 57*

SOFT-LITE LENSES

Made by the Bausch & Lomb Optical Company exclusively for the Soft-Lite Lens Company, Inc., New York, Toronto, London

REGISTERED DISPENSING LICENSE

(Prescription)

Whereas, Soft-Lite Lens Company, Inc., of No. 745 Fifth Avenue, New York, N. Y., hereinafter referred to as "Licensor" is the exclusive producer of Soft-Lite lenses and lens blanks and is the sole and exclusive owner of the trade name and trade marks used in connection with the distribution and sale of said lenses and lens blanks, and

Whereas, _____ of _____, hereinafter referred to as "Licensee," has made application for authority to dispense and sell said Soft-Lite lenses,

Now, therefore, this license is issued upon the following additional terms and conditions:

1. Licensor hereby grants to Licensee a revocable, nonexclusive and nontransferable license to purchase said Soft-Lite lenses from any of the duly appointed Soft-Lite Distributors or Class "A" Wholesalers and to resell said lenses at prices prevailing in the locality in which Licensee conducts his practice or business.

2. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses; it being understood that the promotion of the sale of other lenses of a similar color, or the substitution of other lenses for Soft-Lite lenses, is detrimental to the good name and reputation of Soft-Lite lenses and may adversely affect the prestige thereof. Said Soft-Lite lenses shall be sold only under the trade names and marks of the Licensor, and only to the patient or consumer.

3. Licensor agrees to furnish sales promotional assistance, advertising materials and sales aids of professional and scientific nature designed by Licensor to help increase the use and sale of Soft-Lite lenses by the Licensee.

4. Licensor, simultaneously with the issuance of this License will provide the Licensee with an Identification Plaque, bearing serial number _____. Said Identification Plaque shall at all times be the property of the Licensor and shall be returned to the Licensor immediately upon the termination of the license.

5. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days, to the effect that it elects to terminate this license, and at the expiration of said period this license shall then terminate; but the termination of this license shall not relieve the Licensee from the payment of any moneys due and payable to Licensor or to parties holding a license from Licensor or from any other obligations due to be performed hereunder at or after the time of said termination.

In witness whereof, the Soft-Lite Lens Company, Inc., has caused this License to be executed by its duly authorized officer on the _____ day of _____ 19____.

SOFT-LITE LENS COMPANY, INC.

By _____

1220-A SOFT-LITE LENSES

REGISTERED DISPENSING LICENSE

(Prescription)

1221 *Exhibit 58*

MEMORANDUM FROM A. F. IMMIG

Pgr.

Kirkland Optical Co., of Utica, was put on Rx list as a result of adding all orthogon franchise holders to our accounts.

A. F. I.—4/17.

1231 *Exhibit 60*

SOFT-LITE HONOR ROLL GROWS APACE!

Soft-Lite Stock Licenses Issued Since July 1, 1936

M. W. Lukinovich, New Orleans, La.

E. W. Larsons, Hibbing, Minn.

Dr. Carl Dent, Dowington, Pa.

Manson Low, Dorchester, Mass.

Herman C. Kline, New Haven, Conn.

Raymond C. Lake, Brockton, Mass.

Merwyn W. Bird, Belfast, Me.
Howard S. Wells, Framingham, Mass.
Durgin's Jewelry & Optical, Worcester, Mass.
R. S. Wyman, Fitchburg, Mass.
S. H. Grater, Waterbury, Conn.
Conrad Kasack, New Haven, Conn.
Walter M. Welch, Boston, Mass.
Dr. H. H. Holt, Roxbury, Mass.
Eastman & Co., Providence, R. I.
Ray Mason Leonard, Bridgeport, Conn.
Dr. H. E. Hodgdon, Arlington, Mass.
Edward E. Keiber, New York, N. Y.
Louis F. Lemp, Syracuse, N. Y.
A. R. Trapp, Inc., New York, N. Y.
Charles Ratner, Freeport, N. Y.
A. F. Goodhue, Fort Fairfield, Me.
C. A. Spaulding, Houlton, Me.
Frank A. Nadeau, Fort Kent, Me.
Wm. A. Small, Caribou, Me.
W. G. Gregory, O. D., Reed & Wheaton, Cadillac, Mich.
H. R. Musselman, Bethlehem, Pa.
Frank Morrison, Philadelphia, Pa.
Dr. F. M. Wilbur, New Bedford, Mass.
Greenberg & Lindman, Milwaukee, Wis.
Hart Optical Company, New York, N. Y.
Homer E. Brown, Stamford, Conn.
Stanley S. Susskind, Mt. Vernon, N. Y.
H. W. Poor, O. D., York, Pa.
Earl W. Pratt, Reno, Nev.
F. A. Perkins, The Dalles, Ore.
F. A. Bemis, Portland, Ore.
H. J. Maulbetsch, O. D., Portland, Ore.
Dr. E. E. Boring, North Bend, Ore.
R. Ransom, Fresno, Calif.
Harold Albro, Albany, Ore.
Paul Owens, O. D., Pampa, Tex.
F. D. Roberson, O. D., Wood River, Ill.
H. R. Barkdoll, O. D., Milwaukee, Wis.
Paul R. Hensel, O. D., St. Louis, Mo.
Arthur F. Williams, St. Paul, Minn.
Dr. A. J. Dermid, Greenville, S. C.
C. G. Frye, Kingsport, Tenn.
Dr. H. C. Bumpous, St. Petersburg, Fla.
Optical Service Co., Tuscaloosa, Ala.
Crowe, Opticians, Charleston, S. C.
Dr. C. E. Jurgensen, Middletown, Ohio.
Dr. E. Markhus, Minneapolis, Minn.

Dr. Harry E. Lilja, Minneapolis, Minn.
J. C. Richmond, Boston, Mass.
G. V. Putnam, New London, Conn.
F. H. Moulton, Malden, Mass.
T. P. Fields, Parkersburg, W. Va.
H. B. Martin, Cincinnati, Ohio.
Tower Optical Co., Cincinnati, Ohio.

Soft-Lite Registered Dispensing Licenses Issued Since July 1, 1936

Dr. R. Adams, Birmingham, Ala.
Geo. A. Bonelli, Durango, Colo.
Bakersfield Opt. Co., Bakerfield, Calif.
R. Greenspoon, Beverly Hills, Calif.
W. S. Spike, Downey, Calif.
H. G. Tollington, Huntington Pk., Calif.
H. S. Beucher, Los Angeles, Calif.
L. A. Barrows, Los Angeles, Calif.
Collins Optical Co., Los Angeles, Calif.
P. B. Daves, Los Angeles, Calif.
A. P. Dale, Los Angeles, Calif.
Charles McQuarrie, Los Angeles, Calif.
F. W. Sugmund, Los Angeles, Calif.
L. Ray Turner, Los Angeles, Calif.
Alvin J. Vieira, Los Angeles, Calif.
Raymond L. Ng, Oakland, Calif.
B. E. Doidge, Richmond, Calif.
P. T. Black, Riverside, Calif.
Arthur Chong, San Francisco, Calif.
J. R. Packwood, Susanville, Calif.
G. C. Rollins, Tracy, Calif.
R. A. Bergin, Upland, Calif.
Ernest Stone, Ventura, Calif.
K. F. Brown, Hartford, Conn.
Mutual Optical Co., Hartford, Conn.
Dr. S. G. Weiss, Torrington, Conn.
Harold F. Bidwell, W. Hartford, Conn.
Dr. R. H. Cubberly, Wilmington, Del.
Leonard C. Lipscomb, Wilmington, Del.
S. W. Smith, O. D., Wilmington, Del.
Dr. Walker H. Matthews, Athens, Ga.
Dr. B. McH. Clive, Atlanta, Ga.
Fred M. Radebaugh, Cartersville, Ga.
Dr. J. Wallace Daniel, Claxton, Ga.
Dr. Thos. E. Hogshead, Dalton, Ga.
Dr. Paul T. Ballard, Eatonton, Ga.
Dr. J. C. Morrison, Gainesville, Ga.

Dr. E. L. Moore, Statesboro, Ga.
J. E. Holmes, O. D., St. Anthony, Ida.
Dr. H. Bernhardt, Chicago, Ill.
Dr. M. Goldblatt, Chicago, Ill.
Dr. E. T. Kennedy, Jr., Chicago, Ill.
S. B. Kousnetz, O. D., Chicago, Ill.
Dr. Anna F. Kutza, Chicago, Ill.
Herman G. Oehler, O. D., Chicago, Ill.
Austin J. Pritchard, Chicago, Ill.
Dr. Chas. Sellers, Chicago, Ill.
Julian Shapps, O. D., Chicago, Ill.
Howard M. Payne, O. D., DeKalb, Ill.
Neil P. Jensen, O. D., Momenze, Ill.
C. W. Farley, O. D., Ottawa, Ill.
E. H. Colner, O. D., Rockford, Ill.
Lewis DeVries, O. D., Streator, Ill.
Harold Cline, Elkhart, Ind.
Dr. A. A. Forszt, Indiana Harbor, Ind.
Dr. Roy E. Denny, Indianapolis, Ind.
Dr. O. R. Hale, Indianapolis, Ind.
Dr. Eleanor McIlivain, Marion, Ind.
Dr. Frank M. Kaup, Des Moines, Ia.
Dr. G. E. Lofgren, Mediapolis, Ia.
Dr. G. P. Gold, Hiawatha, Kans.
Dr. W. H. Haldeman, Morrill, Kans.
William H. Fox, Brunswick, Me.
Dr. Mathew L. Pinto, Baltimore, Md.
Dr. M. I. Broadwater, Oakland, Md.
C. A. L. Langton, Boston, Mass.
Henry B. Lynch, Boston, Mass.
Muller & Holland, Boston, Mass.
Dr. John Pothoff, Boston, Mass.
Walter G. Pratt, Boston, Mass.
Dr. David Ricardo, Boston, Mass.
Stewart & Heney, Clinton, Mass.
M. H. Kannan, Lawrence, Mass.
Dr. F. H. Moulton, Malden, Mass.
Arthur W. Gordon, Needham, Mass.
Quincy Optical Co., Quincy, Mass.
J. W. Craven, North Adams, Mass.
Dr. G. E. Lannigan, Roslindale, Mass.
Karl Wilhelm, Springfield, Mass.
Dr. Clifford H. Lake, Stoughton, Mass.
Dr. H. E. Pierce, Taunton, Mass.
E. L. Eichhorn, Bay City, Mich.

Lawrence J. Richard, Detroit, Mich.
Dr. S. H. Rubinfeld, Ontonagon, Mich.
Kanter Jewelry Store, Duluth, Minn.
Dr. E. A. Roton, Fergus Falls, Minn.
Dr. M. J. Lindahl, Jasper, Minn.
F. H. Rohlin, O. D., Marshall, Minn.
D. H. Lombard, Minneapolis, Minn.
L. M. Larson, Tracy, Minn.
J. L. Egleston, O. D., Wadena, Minn.
Dr. D. H. Orkin, Jackson, Miss.
Dr. Pedro Smith, Tylertown, Miss.
Dr. B. Wickenseimer, Vicksburg, Miss.
Clifton E. Owen, California, Mo.
Blanche Hein, Carrlton, Mo.
Dr. Chas. P. Cadwell, Kansas City, Mo.
Dr. J. R. Bockhorst, St. Louis Mo.
Kays Opt. & Photo Co., St. Louis, Mo.
Dr. A. J. Hossbein, Great Falls, Mont.
A. E. Ostroat, Montana Block, Mont.
Dr. L. P. Johnson, Humboldt, Nebr.
Dr. J. E. Burress, Lincoln, Nebr.
Clarence I. Theede, Lincoln, Nebr.
Dr. J. G. Harley, Portsmouth, N. H.
Frank R. Buchanan, Camden, N. J.
William L. Schlosses, East Orange, N. J.
Dr. Z. M. Vineburg, Englewood, N. J.
Medical Tower Opticians, Newark, N. J.
Jess J. Wasserman & Co., Newark, N. J.
Dr. J. F. Giles, Paterson, N. J.
Lee's, Inc., Brooklyn, N. Y.
Richard F. Perkins, Buffalo, N. Y.
Utica Optical Co., Buffalo, N. Y.
Dr. Wayne P. Kelly, Clinton, N. Y.
E. R. Hill, Cooperstown, N. Y.
A. S. Howden, Fillmore, N. Y.
J. Richard Johnson, Gasport, N. Y.
E. H. Luke, Ilion, N. Y.
Dr. Gustav Eudler, New York, N. Y.
Jos. Friedlander Co., New York, N. Y.
Fulton Optical Service, New York, N. Y.
Heller & Smith, New York, N. Y.
Dr. Charles Petterson, New York, N. Y.
Rundback Chapman Opt. Co., Inc., New York, N. Y.
True-Site Optical Co., New York, N. Y.
Harry O. Ashley, North Bergen, N. Y.
Smith & Merrill, Oneonta, N. Y.

Fred A. Elliott, Oxford, N. Y.
Dr. M. L. Sarli, Port Chester, N. Y.
Maurice M. Levy, Rochester, N. Y.
Harold B. Prates, Schenectady, N. Y.
J. B. Goff, Tupper Lake, N. Y.
George C. Smith, Watertown, N. Y.
Michael J. Burns, Watervliet, N. Y.
Dr. T. R. Fleschutz, Wellsville, N. Y.
G. Gilbertson, Beach, N. D.
Jno. R. Brown, China Grove, N. C.
McPherson Hospital, Durham, N. C.
Dr. J. O. Baxter, Fayetteville, N. C.
Dr. L. N. West, Raleigh, N. C.
Drs. Wright, Hicks & Powers, Raleigh, N. C.
J. Harry McDonald, Cincinnati, Ohio.
Dr. Leopold L. Gage, Cleveland, Ohio.
Dr. J. M. Gillespie, Dayton, Ohio.
B. B. Brombaugh, Germantown, Ohio.
Dr. Richard L. Nielsen, Lorain, Ohio.
Dr. J. S. Nupuf, Louisville, Ohio.
A. E. Kintner, Painesville, Ohio.
Dr. Pierre B. Baxter, Toledo, Ohio.
Dr. C. W. Clifford, Toledo, Ohio.
Dr. W. E. Mercer, Toledo, Ohio.
Dr. F. W. Staubach, Toledo, Ohio.
Dr. Eunice M. Johnson, Okemah, Okla.
Dr. O. Rich, Okmulgee, Okla.
Dr. W. W. Inkrote, Grants Pass, Ore.
J. P. Krevolin, Providence, R. I.
A. Berman, Altoona, Pa.
Dr. R. J. Heffley, Berlin, Pa.
Robert L. Jones, Chambersburg, Pa.
D. M. Cherkin, Monessen, Pa.
H. E. Tice, Myerstown, Pa.
Joseph B. Deissler, Philadelphia, Pa.
L. S. Grossman, Philadelphia, Pa.
George P. Naftulin, Philadelphia, Pa.
F. W. Sutor, O. D., Philadelphia, Pa.
Francis J. Wagner, Philadelphia, Pa.
Jacob P. Kuschel, Pittston, Pa.
Dr. Frances L. Ballard, Troy, Pa.
Charlotte Marsteller, Uniontown, Pa.
Samuel Hurwitz, Wilkes-Barre, Pa.
H. Kirkpatrick, Midland, S. D.
Dr. D. Isbell, Chattanooga, Tenn.
Dr. J. R. Norton, Murfreesboro, Tenn.
Dr. A. J. Black, Amarillo, Tex.
L. R. Tigner, O. D., Ballinger, Tex.
Bazil Noble, Childress, Ballinger, Tex.

A. L. Thomas, Ennis, Tex.
E. E. Russell, Mission, Tex.
J. D. Carroll, Shelbyville, Tex.
W. C. Gruben, Spur, Tex.
David R. Spohr, Jr., Torentum, Tex.
Dr. W. O. Bailey, Leesburg, Va.
Everett B. Clark, Norfolk, Va.
Dr. B. S. Leharwich, Richmond, Va.
Dr. Mason Pace, Richmond, Va.
Wayne M. Reed, Montpelier, Vt.
V. F. Bird, Elkins, W. Va.
Blanche Wilson Ross, Salem, W. Va.
Dr. R. H. DeWitt, Wellsburg, W. Va.
Harry S. Kurzon, Milwaukee, Wis.
Dr. Ray J. Manger, Mineral Point, Wis.
H. J. Simmert, O. D., Waukesha, Wis.
Anton Napientek, West Allis, Wis.

We Regret the Necessity of Announcing These Soft-Lite Licenses Cancelled Since July 1, 1936

Archie D. Engel, Washington, D. C.
Earl G. Dowda, Atlanta, Ga.
W. W. Perrott, Columbus, Ga.
T. H. Wynn, Griffin, Ga.
J. A. Spratling, Macon, Ga.
I. & H. Conovitz, Flushing, N. Y.
Dr. A. H. Hawkins, Hendersonville, N. C.
N. L. LeMontree, Dayton, Ohio.
E. Lewis Cannon, Philadelphia, Pa.
Miller & Miller, Pottsville, Pa.
Dr. G. W. Howell, Henderson, Tex.
Lord Optical Company, Dallas, Tex.
J. H. Ohm, Eau Claire, Wis.
F. W. Fornfeldt, Marshfield, Wisc.
Salter & Tracy, Los Angeles, Calif.
A. G. DeRevey, Canton, Ill.
Wm. E. Shepard, Des Moines, Ia.
Hager Jewelry & Optical Co., Clay Centre, Nebr.
Clayton A. Brodt, Auburn, N. Y.
Carl F. Diehl, Flushing, N. Y.
Dr. F. Chetywnd, Gloversville, N. Y.
Bush & Burnham, Hornell, N. Y.
R. E. MacDuffie, Jamestown, N. Y.
W. E. Felson, Schenectady, N. Y.
Stanley W. Thompson, Syracuse, N. Y.
Bernard Seal, Providence, R. I.
J. A. Swindell, Nacogdoches, Tex.
Oscar Larson, St. Paul, Minn.
Dr. E. E. Eddy, Huntington, W. Va.

1232 *Exhibit 60–A*

CHANGES IN SOFT-LITE LICENSEE LISTS

Soft-Lite Stock Licensees Added Since Jan. 1, 1937

Dr. H. R. Piccaluga, Jr., New Orleans, La.
Andrew C. Zellner, Troy, N. Y.
Andrew J. Driscoll, Optician, Brooklyn, N. Y.
Philip Langsam, Brooklyn, N. Y.
Dr. Samuel Pruzansky, New York, N. Y.
J. H. Olver, Lang Opt. Co., Buffalo, N. Y.
H. & H. R. Barnes, O. D.'s, Brooklyn, N. Y.
Paul Balsam, O. D., New York, N. Y.
Abraham Singer, New York, N. Y.
Dr. Henry Kubel, New York, N. Y.
Dr. Gustav Endler, New York, N. Y.
Dr. Mitchell R. Austin, New York, N. Y.
Samuel M. Levy, New York, N. Y.
Lynn E. Kelley, O. D., Mamaroneck, N. Y.
Joseph B. Karp, O. D., Spring Valley, N. Y.
W. A. Kruger, O. D., New York, N. Y.
Sommers-Zims, Port Chester, N. Y.
James J. Curran, O. D., Ossining, N. Y.
Frank & Lesswing Optical Co., Buffalo, N. Y.
Vogel & Ruehl, Opticians, Buffalo, N. Y.
L. H. Lucier, O. D., Bridgeport, Conn.
Harvey & Lewis, New Britain, Conn.
W. K. Graham, O. D., Meriden, Conn.
H. F. Reddell, O. D., New Britain, Conn.
Dr. J. J. Murray, Waltham, Mass.
Dr. Victor Cohen, Haverhill, Mass.
D. D. Leavitt, Whitman, Mass.
Dr. Harold F. Hinckley, Hyannis, Mass.
Frank Provencher, O. D., North Adams, Mass.
Dr. Frank A. Fairbanks, Worcester, Mass.
A. W. Canedy, O. D., Fall River, Mass.
C. L. Chase, O. D., Lansing, Mich.
Connolly Jewelry Co., Pontiac, Mich.
G. A. Welsch, Menominee, Mich.
Drs. D. B. & D. B. Thomson, Detroit, Mich.
Dr. M. Burton Meyer, Wilmington, Del.
B. F. Rudnick, O. D., Wilmington, Del.
J. G. Emil Roeger, O. D., Philadelphia, Pa.
Gustave Villig, O. D., Philadelphia, Pa.
Minor L. Tyrell, Bradford, Pa.

Everett M. Westcott, Westerly, R. I.
A. D. Thuotte, O. D., West Warwick, R. I.
K. P. Armstrong, O. D., Providence, R. I.
C. R. Miller, O. D., San Diego, Cal.
Elmer E. Berry, O. D., Los Angeles, Cal.
J. G. Goble, O. D., Yreka, Cal.
R. R. Rodig, Tucson Opt. Service, Tucson, Ariz.
E. M. Klein, Birmingham, Ala.
Walter Ballard Optical Co., Atlanta, Ga.
Marsh-Bruce Optical Co., Memphis, Tenn.
Dr. C. A. Shugart, Cleveland, Tenn.
Drs. Stanton & Amesbury, Minneapolis, Minn.
F. J. Pratt, M. D., Minneapolis, Minn.
F. A. Zimmerman, Minneapolis, Minn.
A. J. Krueger, O. D., North Branch, Minn.
F. H. Rohlin, O. D., Marshall, Minn.
D. H. Lombard, Minneapolis, Minn.
Dr. E. J. Cain, South Bend, Ind.
H. C. Blackann, O. D., Lorain, Ohio.
Dantzic Optical Company, Cumberland, Md.
Dr. T. A. Tucker, Fort Worth, Tex.
J. W. Ragland, Zales Jlry Co., Amarillo, Tex.
Dr. W. W. Christopher, Dallas, Tex.
Dr. L. F. Zwiener, Fredericksburg, Tex.
Bert E. Wood, O. D., Henderson, Tex.
J. L. St. Clair, O. D., Dallas, Tex.
J. E. Galloway, O. D., Wichita Falls, Tex.
H. W. Hansen, O. D., St. Louis, Mo.
Paul R. Hensel, O. D., St. Louis, Mo.
Chas. Rudnick, Sheboygan, Wisc.
N. M. Tohill, O. D., Santa Fe, N. M.
Dr. Alva D. Coon, Ada, Okla.
H. C. Barth, Chicago, Ill.
Dr. J. T. Petersen, Rockford, Ill.
A. J. Youngdahl, O. D., Chicago, Ill.
A. C. Wilhelm, O. D., Chicago, Ill.

Registered Dispensing Licensees Added Since Jan. 1, 1937

General Optical Company, Los Angeles, Cal.
H. Morrison, O. D., Glendale, Cal.
A. F. Thiele, Los Angeles, Cal.
D. W. Quint, Los Angeles, Cal.
S. A. Goldberg, O. D., Los Angeles, Cal.
Carl Bass, O. D., Arcadia, Cal.

C. H. Wolff, South Gate, Cal.
H. T. Lowry, O. D., San Diego, Cal.
J. J. Eves, Culver City, Cal.
W. F. Conzelman, O. D., Placerville, Cal.
D. R. E. Waters, O. D., Santa Ana, Cal.
F. C. Chinn, Sacramento, Cal.
A. H. Ross, O. D., Petaluma, Cal.
Albert Landa, O. D., San Francisco, Cal.
Ralph Coops, O. D., Los Angeles, Cal.
Preston Kline Caye, O. D., Los Angeles, Cal.
Francis King, O. D., Los Angeles, Cal.
Muneo Katoaka, Los Angeles, Cal.
Chas. F. Brooks, O. D., Napa, Cal.
J. S. Corcoran, Fresno, Cal.
Edward W. Gleie, Sacramento, Cal.
Charles L. Hogue, O. D., Grass Valley, Cal.
Elsie P. Snow, O. D., Petaluma, Cal.
Luther G. Cochran, Sacramento, Cal.
Fred R. Hagener, O. D., San Jose, Cal.
Ernest Schultz, O. D., San Francisco, Cal.
O. W. Nelson, Coalinga, Cal.
O. E. Fischong, San Diego, Cal.
C. Giddings, O. D., San Diego, Cal.
L. S. Palmer, San Diego, Cal.
Herbert L. Kent, O. D., Fresno, Cal.
Fred W. Moore, O. D., Stockton, Cal.
R. Lee Otis, O. D., San Francisco, Cal.
John W. Pugh, O. D., San Jose, Cal.
C. E. Moomau, San Bernardino, Cal.
K. B. Stoddard, O. D., Hanford, Cal.
H. Davis & Sons, Sacramento, Cal.
W. A. Coleman, O. D., Los Angeles, Cal.
O. W. Snow, O. D., Ansonia, Conn.
W. F. Saars, New Haven, Conn.

1233 W. L. Schaffer, O. D., Bridgeport, Conn.
Dr. Ralph U. Wolmer, Willimantic, Conn.
Luther A. Baugh, O. D., Coffeyville, Kans.
E. C. Davis, O. D., Newton, Kans.
M. L. Woods, O. D., Newton, Kans.
Dr. D. D. Becker, Stockton, Kans.
Lee Torrence, O. D., Lucas, Kans.
C. B. Switzer, O. D., Denver, Colo.
A. W. Garing, O. D., Grand Junction, Colo.
W. L. Murray, O. D., Chicago, Ill.
J. Sundberg, O. D., Chicago, Ill.
Joseph Steffeck, O. D., Chicago, Ill.
Dr. H. Blaszczenski, Chicago, Ill.

Norman W. Forbes, O. D., Chicago, Ill.
Dr. A. M. Grefenson, Chicago, Ill.
Dr. A. S. Majcher, Chicago, Ill.
Simon Feinstein, O. D., Chicago, Ill.
W. A. Dreher, O. D., Chicago, Ill.
J. M. Herzberg, O. D., Chicago, Ill.
Klein & Company, Chicago, Ill.
H. C. Lazarski, O. D., Chicago, Ill.
L. B. Mayer, O. D., Chicago, Ill.
Wright T. Stevenson, Chicago, Ill.
George A. Ladouceur, Chicago, Ill.
A. R. Rochte, O. D., Chicago, Ill.
Sidney Shapiro, O. D., Chicago, Ill.
Samuel H. Herr, O. D., Chicago, Ill.
T. H. Craig, O. D., Champaign, Ill.
Donze - Wagner, East St. Louis, Ill.
Paul G. Wolff, O. D., Chester, Ill.
John R. Sehy, O. D., Effingham, Ill.
R. F. Stebor, O. D., Elmhurst, Ill.
T. Q. Swanson, O. D., Gibson City, Ill.
G. B. Ruby, O. D., Aurora, Ill.
C. N. Johnson, Aurora, Ill.
N. R. Becker, O. D., Oak Park, Ill.
G. E. Meisenheimer, O. D., Flora, Ill.
Ottawa Opt. Co., M. Ross, O. D., Ottawa, Ill.
G. A. Bastar, O. D., Harvey, Ill.
Parke P. Swan, O. D., Granite City, Ill.
J. H. Boltz, Aurora, Ill.
A. O. Hooker, O. D., Aurora, Ill.
Kendrick & Lindblad, Aurora, Ill.
F. B. Williams, Hoopeston, Ill.
Clifford C. Miller, O. D., Springfield, Ill.
E. C. Robertson, O. D., Waverly, Ia.
E. A. Swanke, O. D., Ida Grove, Ia.
Iver B. Lund, O. D., Kingsley, Ia.
A. Eberhart, O. D., Elkader, Ia.
M. L. Knutson, O. D., Elkader, Ia.
John Purnhage, O. D., Guttenberg, Ia.
Clarence E. Millard, Independence, Ia.
W. A. Hall, O. D., Manchester, Ia.
F. Ray Robinson, O. D., Sumner, Ia.
J. D. Brown, O. D., Missouri Valley, Ia.
J. Hayes, Jr., O. D., Calamus Ia.
M. W. Getman, O. D., Sioux City, Ia.
James W. Hottel, O. D., Iowa City, Ia.
Glenn A. Port, O. D., Vinton, Ia.

Dr. Glenn M. Peck, Fort Madison, Ia.

J. N. McFadden, O. D., Oelwein, Ia.

Elmer I. Copeland, Cedar Rapids, Ia.

Jas. C. Landenberger, O. D., Cedar Rapids, Ia.

A. H. Bartels, O. D., Grundy Center, Ia.

Harris Optical Company, Baton Rouge, La.

Dr. Helen Goetschel, Baton Rouge, La.

Samuel A. Carleton, New Orleans, La.

Emily A. Barnett, O. D., New Orleans, La.

O. C. Karlberg, O. D., Albert Lea, Minn.

Theo. G. Mahler, O. D., LeSueur, Minn.

George Nebelung, O. D., St. Paul, Minn.

O. R. Purtzer, O. D., New Ulm, Minn.

T. P. Gulshaw, O. D., Minnesota, Minn.

D. I. Threinen, Grand Rapids, Minn.

C. M. Sageser, O. D., Philip, S. D.

Ralph E. Wick, O. D., Rapid City, S. D.

J. H. Krenzien, O. D., Belle Fourche, S. D.

Timothy Norton, O. D., Armour, S. D.

F. W. Hoskins, O. D., Beresford, S. D.

H. E. Schleuter, O. D., Vermillion, S. D.

Drs. A. M. and E. C. Lange, Winner, S. D.

D. D. Covington, O. D., Florence, S. C.

Dr. Leland E. Hildreth, Rochester, N. Y.

Mr. C. H. Nadel, Rochester, N. Y.

Dr. R. E. Elliott, Rochester, N. Y.

Theodore Baldino, O. D., Rochester, N. Y.

Ring Optical Company, Rochester, N. Y.

Dr. Morris H. Horn, New York, N. Y.

W. G. Paul Company, New York, N. Y.

Henry Cohan, New York, N. Y.

John Wanamaker, New York, N. Y.

Harry Schilling, New York, N. Y.

Pratt & Knobloch, New York, N. Y.

B. Attinson, O. D., New York, N. Y.

H. Russ, New York, N. Y.

Morris W. Tear, Westbury, N. Y.

Blau & Klein, New York, N. Y.

Kalmus Optical Co., New York, N. Y.

Schnall Optical Co., New York, N. Y.

GaNun & Parsons, New York, N. Y.

Dr. John A. Price, New York, N. Y.

Isidore Karp, O. D., New York, N. Y.

Paul Balsam, New York, N. Y.

Dr. Barnett Laderman, New York, N. Y.

Dr. D. Mastashe, New York, N. Y.
Dr. Julius Papel, New York, N. Y.
Dr. Edgar A. Reinhardt, New York, N. Y.
M. N. Kaufman, New York, N. Y.
M. Finkel, New York, N. Y.
M. Ruderman, O. D., New York, N. Y.
Francis E. Cox, O. D., Albany, N. Y.
T. C. Tanke, Inc., Buffalo, N. Y.
Sacketts, Opticians, Buffalo, N. Y.
John L. Holly, Corning, N. Y.
Frank DeMarco, Brooklyn, N. Y.
Aaron Berow, Brooklyn, N. Y.
C. H. Scholermann, Pleasantville, N. Y.
Charles D. Wicks, O. D., Lackawanna, N. Y.
A. H. Reiss, O. D., Mineola, N. Y.
Herbert Levinson, O. D., Bay Shore, N. Y.
Maurice H. Fanning, Roxbury, N. Y.
J. M. Coghlin, O. D., Patchogue, N. Y.
Samuel Peyser, White Plains, N. Y.
Harold V. Hutcheson, Tarrytown, N. Y.
Stephen L. Mongan, Richmond Hill, N. Y.
H. D. Whitney, O. D., Union, N. Y.
Paul Johnson, O. D., Mount Kisco, N. Y.
Chas. P. Ward & Son, Yonkers, N. Y.
Frank Paul Walters, Richmond Hill, N. Y.
Dr. J. E. Nance, Trenton, N. J.
Harry Martin, O. D., Newark, N. J.
C. J. Gravatt, Toms River, N. J.
Frederick W. Hanle, Newark, N. J.
Dr. Reuben Baer, Hoboken, N. J.
Joseph Shneidman, O. D., Newark, N. J.
Ralph B. Gaeta, Union City, N. J.
Dr. Carl V. Green, Lakehurst, N. J.
Jerome Bartok, O. D., Penns Grove, N. J.
Dr. W. J. Gannon, Gloucester, N. J.
Dr. John H. Pillion, Lakewood, N. J.
R. M. Shindler, O. D., Vineland, N. J.
Dr. J. Asarkoff, Boston, Mass.
Sennott & Alperen, Cambridge, Mass.
J. R. Arseneault, Worcester, Mass.
Dr. O. C. Johnson, Cambridge, Mass.
Carl Nelson, O. D., Worcester, Mass.
Arthur Rice, O. D., Worcester, Mass.
Geo. Allen, O. D., Taunton, Mass.
G. Edward Bradley, Somerville, Mass.

1234 Howell E. Estey, Lynn, Mass.
C. R. Phillips, New Bedford, Mass.
C. M. Porter, Lynn, Mass.
M. I. Gowin, East Boston, Mass.
Union Optical Company, Boston, Mass.
George X. Constantin, Holyoke, Mass.
Dr. R. H. White, Melrose, Mass.
H. A. Sedman, O. D., Boston, Mass.
Leslie A. Underwood, Boston, Mass.
F. E. Morrow, O. D., Camden, Maine.
David Berlowirz, O. D., Westbrook, Maine.
Brown Jewelry Company, Portsmouth, N. H.
A. E. Evens, O. D., Bennington, Vermont.
J. J. Curry, O. D., Bowling Green, Ohio.
Dushman-Huson, Toledo, Ohio.
Frank W. Rolf, Optician, Cincinnati, Ohio.
J. H. Ulmer, O. D., Galion, Ohio.
J. E. Zimmerman, Hillsboro, Ohio.
Sidney C. Howard, O. D., Columbus, Ohio.
M. Alice Sparrow, O. D., Toledo, Ohio.
John E. Joss, O. D., New Philadelphia, Ohio.
A. J. Harris, O. D., New Philadelphia, Ohio.
Jos. Klein, O. D., Cincinnati, Ohio.
Howard L. Culbertson, Zanesville, Ohio.
Geo. A. Spies, O. D., Steubenville, Ohio.
N. L. Fitzgerald, O. D., Toledo, Ohio.
Richard T. Welling, Jr., Lockland, Ohio.
Dr. W. G. Hites, Youngstown, Ohio.
Dr. H. E. Gabriel, Youngstown, Ohio.
Dr. R. H. Grady, Wellstown, Ohio.
William Meikle, O. D., Dayton, Ohio.
C. F. Lentz, O. D., Columbus, Ohio.
James Bing, O. D., Cincinnati, Ohio.
Dr. R. L. Turner, Toledo, Ohio.
H. B. Armstrong, O. D., Barnesville, Ohio.
R. C. Baxter, O. D., Warren, Ohio.
B. E. Moree, Columbus, Ohio.
Robert Oswald, O. D., Toledo, Ohio.
W. B. Stephens, O. D., Dayton, Ohio.
Earle O. Sterzer, Dayton, Ohio.
S. Evans & Sons, Dayton, Ohio.
O. P. Silverman, O. D., Dayton, Ohio.
Eugene B. Brown, Dayton, Ohio.
F. W. Zechman, O. D., Miamisburg, Ohio.
Ralph H. Donges, O. D., Zenia, Ohio.
P. H. McKay, O. D., Bay City, Mich.

David Rose, O. D., Detroit, Mich.

H. J. Van Auken, O. D., Newberry, Mich.

John J. Gorilla, O. D., Ironwood, Mich.

Glenn H. Mason, O. D., Grand Rapids, Mich.

Shellman & White, Grand Rapids, Mich.

S. E. Suplissis, O. D., Muskegon, Mich.

G. M. Billmeier, Saginaw, Mich.

Dr. E. J. Stineman, St. Clair, Mich.

Don L. McLeod, O. D., Detroit, Mich.

Wm. H. Dickert, O. D., Detroit, Mich.

J. L. Drummond, Detroit, Mich.

Bernard B. Schwartzman, O. D., Baltimore, Md.

Mr. S. H. Krome, Baltimore, Md.

Robert W. Campbell, O. D., Philadelphia, Pa.

Curtis O. Whitticar, O. D., Philadelphia, Pa.

Austin Gleeson, O. D., Philadelphia, Pa.

Hackert & Davis, Philadelphia, Pa.

A. D. Venuto, O. D., Philadelphia, Pa.

A. C. Leupold, O. D., Philadelphia, Pa.

Masseau, Opticians, Philadelphia, Pa.

Mullen & Wolf, Philadelphia, Pa.

C. A. Longstreth, Philadelphia, Pa.

Kenneth E. Palmer, Optician, Norristown, Pa.

John P. Mikatavage, O. D., Minersville, Pa.

Vincent Mikatavage, O. D. Minersville, Pa.

J. C. Douley, O. D., Gettysburg, Pa.

Dr. H. M. Speare, West Chester, Pa.

James L. McKenna, Jenkentown, Pa.

Walter L. Bache, O. D., Philadelphia, Pa.

Aaron Mogul, O. D., Chester, Pa.

Paul D. Harbach, O. D., Reading, Pa.

Dr. James Jobe, Greensburg, Pa.

Paul B. Hamaker, O. D., Burgettstown, Pa.

J. R. Meek, New Wilmington, Pa.

Dr. C. V. Yealy, Derry, Pa.

Victor Carlson, O. D., Pittsburgh, Pa.

Dr. David G. Greenfield, Washington, D. C.

J. H. Wolpe, O. D., Washington, D. C.

E. P. Collins, O. D., Smyrna, Del.

Dr. L. J. Machin, Oshkosh, Wisc.

Dr. Charles Imig, Sheboygan, Wisc.

Dr. Adolph O. Behling, Opt., Milwaukee, Wisc.

Paul F. Sass, O. D., Reedsburg, Wisc.

C. F. Dunbar Co., O. Liljequist, O. D., Wausau, Wisc.

I. W. Harper, O. D., Ashland, Wisc.

J. B. Smith, O. D., Alva, Okla.

Miller Optical Company, Ardmore, Okla.

J. W. Bishop, O. D., Claremore, Okla.

Drs. Woolsey & Woolsey, Waco, Texas.

Wm. M. Sanders, O. D., Fort Worth, Texas.

Dr. Jas. R. Gill, Jr., Waxahachie, Texas.

C. A. Scates, O. D., Del Rio, Texas.

R. J. Benson, O. D., Amarillo, Texas.

J. A. Russell, O. D., Del Rio, Texas.

Edward Caroe, O. D., San Angelo, Texas.

S. Greenberg, O. D., Austin, Texas.

Dr. Lyle Benson, Minot, N. D.

Dr. E. A. Arhart, Grand Forks, N. D.

Martin A. Poth, O. D., St. Louis, Mo.

H. W. Hagenah, O. D., Kansas City, Mo.

George J. Skipton, O. D., Kansas City, Mo.

Manson D. Bell, Kansas City, Mo.

J. W. Register, O. D., Kansas City, Mo.

T. M. Sellars, O. D., Kansas City, Mo.

Capitol Optical Company, Little Rock, Ark.

Otto Ackerman, O. D., Minden, Nebr.

Leo G. Miller, O. D., Lincoln, Nebr.

H. S. Welch, O. D., Lincoln, Nebr.

T. L. Davies, O. D., Falls City, Nebr.

R. G. Pade, O. D., McCook, Nebr.

W. G. Regel, Gary, Ind.

Dr. M. J. Smith, Newcastle, Ind.

Caster E. Wilson, O. D. Crawfordsville, Ind.

Dale E. Berkebile, O. D., Rochester, Ind.

Frank H. Robinson & Son., Frankfort, Ind.

Wiley J. Utz, O. D., Evansville, Ind.

C. E. Whitehead, O. D., Bozeman, Mont.

Dr. George S. Jennings, Medford, Ore.

Dr. Royal J. Gick, Eugene, Ore.

Maurice Schwartz, O. D., Burne, Ore.

1235 Bradley Optical Company, Everett, Wash.

Ralph Lavine, O. D., Spokane, Wash.

W. H. Hennessey, O. D., Seattle, Wash.

E. G. Mills, O. D., Mt. Pleasant, Utah.

J. E. Broaddus, O. D., Salt Lake City, Utah.

S. A. Stevens, Ogden, Utah.

D. Marcus Handleman, Warsaw, Va.

Dr. V. P. Hess, Orange, Va.

Gerald T. Eaton, Norfolk, Va.

White Opt. Co., Newport News, Va.

Virginia Optical Co., Charlottesville, Va.
Geo. E. Flippin, Charlottesville, Va.
Dr. H. B. McCoy, Rome, Ga.
Dr. M. C. Robert, Winder, Ga.
Dr. F. G. Hull, Acworth, Ga.
Dr. H. S. Banta, Newnan, Ga.
Dr. E. L. Tribble, Covington, Ga.
Dr. W. I. Carmichael, Rockmart, Ga.
F. E. Vaissiere, O. D., Rome, Ga.
Calhoun Optical Company, Atlanta, Ga.
S. M. Dekle, O. D., Cordele, Ga.
Dr. Bernard Forrest, Miami, Fla.
Dr. L. S. Smith, Kosciusko, Miss.
Dr. R. L. Ivy, Louisville, Miss.
Y. K. Worley, O. D., Yazoo City, Miss.
Dr. R. E. Howell, Dothan, Ala.
S. M. Carter, O. D., Dickson, Tenn.
E. D. Dempsey, O. D., Henderson, Ky.
J. O. Tyson, O. D., Warsaw, Ky.

Registered Dispensing Licensee Cancellations Since April 15, 1937

Benjamin Weiss, O. D., Waterbury, Conn.
Macy Battalin, O. D., New Haven, Conn.
J. A. Masterton, Middletown, Conn.
Edward C. Mintz, Hartford, Conn.
Dr. Israel Gershanoff, Hartford, Conn.
E. J. Brown, Hartford, Conn.
Dr. Wm. Boysen, Hartford, Conn.
Eggers Bros., Atlantic, Iowa.
D. E. Hook, Des Moines, Iowa.
J. R. McLellan, O. D., Wichita, Kan.
J. C. Hadler, O. D., Wichita, Kan.
Edward A. Wright, O. D., Wichita, Kan.
J. C. Hadler, O. D., Wichita, Kan.
J. H. Nickell, Chicago, Ill.
H. S. Stone, O. D., Boston, Mass.
E. G. Worthley, Amesbury, Mass.
Charles E. Alls, Boston, Mass.
The Back Bay Jeweler, Boston, Mass.
Benjamin Clark, Boston, Mass.
William D. Baumgarten, Cambridge, Mass.
Dr. B. B. Glickman, Dorchester, Mass.
C. Rogers & Company, Springfield, Mass.
Dr. H. L. PreFontaine, Grand Rapids, Mich.
Estate C. A. Harriman, Bath, Maine.
Chas. O. Davenport, Gardiner, Maine.
J. H. Sancton, O. D., Old Town, Maine.

Frank L. Hutchins, Portland, Maine.
Kenneth M. Greene, O. D., Camden, Maine.
Hall & Hunt, Bath, Maine.
Ralph T. Mulvanity, O. D., Nashua, N. H.
Charles T. Schantz, Bayonne, N. J.
Dr. J. F. Giles, Paterson, N. J.
H. T. Goslin, O. D., Gallup, N. M.
Bakersfield Optical Co., Bakersfield, Cal.
D. H. Holmes, New Orleans, La.
George B. Calder, Watertown, N. Y.
George F. Hill, Watertown, N. Y.
F. F. Mesmer, Syracuse, N. Y.
Wilson's Jewelers, Syracuse, N. Y.
M. B. Silverman, Syracuse, N. Y.
E. L. Davis, Syracuse, N. Y.
Geo. H. P. Stone, Opt., Ilion, N. Y.
Samuel Solodar, New York, N. Y.
Morton Abrams, O. D., New York, N. Y.
L. T. Davis Optical Co., El Paso, Texas.
Charles Harrison, O. D., Abilene, Texas.
F. C. Stamm, Corpus Christi, Texas.
G. W. Howell, O. D., Crockett, Texas.
Chas. F. Pilgrim, Eagle Pass, Texas.
T. E. Harwell, O. D., Harlingen, Texas.
M. L. Norvell, O. D. McFadden Jewelry Co., San Benito, Texas.
J. D. Carrol, Shelbyville, Texas.
W. C. Gruben, O. D., Spur, Texas.
H. C. Quinn, O. D., Kilgore, Texas.
Oscar Majors, Colorado, Texas.
L. T. Davis Opt. Co., El Paso, Texas.
C. E. McGuire, O. D., Fort Worth, Texas.
T. A. Boren, Henderson, Texas.
Glenn J. Summers, O. D., California, Mo.
H. Kirkpatrick, Midland, S. D.
Ensign Herrick, Salt Lake City, Utah.
C. M. Brooker, O. D., Salt Lake City, Utah.
Clara A. Chritzman, Gettysburg, Pa.
Blocher's Jewelry Store, Gettysburg, Pa.
A. Ch. Reisz, Ryan Jewelry Store, Baraboo, Wisc.
W. A. Pfister, O. D., Sheboygan, Wisc.
Rosenfield Jewelry Store, Oklahoma City, Okla.

Soft-Lite Stock Licensees Cancelled Since Apr. 15, 1937

Fox Jewelry Co., Grand Rapids, Mich.
John S. Lowe, Muskegon, Mich.

Dr. Frank A. Nadeau, Fort Kent, Maine.
Dr. Bruce P. Johns, Los Angeles, Calif.
C. E. Frederich Optical Co., Ft. Dodge, Iowa.
Dr. J. R. Soble, Roseland, Ill.
Morgan & Hanson, Chicago, Ill.
H. H. Plumb, Troy, N. Y.
Henry's, Syracuse, N. Y.
F. J. Guildbault Optical Co., St. Louis, Mo.
Dr. C. I. Mariscal, Pawtucket, R. I.
Edw. T. Jenison, O. D., San Antonio, Texas.
C. H. Aiken, O. D., San Marcos, Texas.
E. R. Stover, Milwaukee, Wisc.

1236 — *Exhibit 60–B*

CHANGES IN SOFT-LITE LICENSEE LISTS

Soft-Lite Stock Licensees Removed Since Aug. 1, 1937

Marshutz Optical Company, Los Angeles, Cal.
Henry L. Kurtz, O. D., San Francisco, Cal.
K. S. Hayes, Los Angeles, Cal.
R. E. DeArmond, O. D., Colton, Cal.
Raymond Corey, Opticians, Hartford, Conn.
J. Lustig, O. D., Bridgeport, Conn.
O. H. Bersch, Chicago, Ill.
M. D. Gammell, O. D., Chicago, Ill.
S. W. Walder, O. D., Chicago, Ill.
George W. Elgin, O. D., Chicago, Ill.
Joseph E. Kernel, Indianapolis, Ind.
Dr. Ethelred Curtis, LaPorte, Ind.
A. Hammond Rist, O. D., Leominster, Mass.
Harold J. Sparling, Boston, Mass.
Theo. J. Johannes, O. D., Detroit, Mich.
B. W. Stratton, Detroit, Mich.
Z. J. Bowski, Detroit, Mich.
Drs. Campbell & Pagel, Detroit, Mich.
Gerson Jewelry Company, Detroit, Mich.
Charles W. Johannes, O. D., Detroit, Mich.
Johnston Jewelry Company, Detroit, Mich.
Kobackers, Flint, Mich.
Wm. Van Steenbergen, Grand Rapids, Mich.
Henry N. Dekker, O. D., Muskegan, Mich.
Connolly Jewelry Company, Pontiac, Mich.
Roddy-Kuhl-Ackerman, Inc., St. Paul, Minn.
Cote Optical Company, Jackson, Miss.
Keen Sight Optical Company, Brooklyn, N. Y.

Geo. W. Loewitt, O. D., Youngstown, Ohio.
J. B. Sheets, Blackwell, Okla.
D. A. Chambers, O. D., Corvallis, Ore.
Schubach Optical Co., Salt Lake City, Utah.
Prescription Optical Co., Everett, Wash.

Registered Dispensing Licensees Removed Since Aug. 1, 1937

G. W. Bohne, O. D., Birmingham, Ala.
J. C. Collier, O. D., Birmingham, Ala.
E. N. Levy, O. D., Los Angeles, Cal.
Jane D. Simpson, Huntington Park, Cal.
A. B. Perel, Hollywood, Cal.
Stanley Shaffer, O. D., Merced, Cal.
Harry A. Dildine, Hollywood, Cal.
B. F. Sherman, O. D., Huntington Park, Cal.
H. C. Bryan, O. D., Lancaster, Cal.
R. W. Cosby, O. D., South Gate, Cal.
Geo. B. Witman, O. D., Ontario, Cal.
Ralph M. Abrams, O. D., Los Angeles, Cal.
Alvin J. Vieira, Los Angeles, Cal.
Haney & Poole, Marysville, Cal.
Jos. H. Gallup's Daughters, Denver, Colo.
M. A. White, O. D., Boulder, Colo.
Mutual Optical Company, Hartford, Conn.
S. S. Agranov, O. D., South Norwalk, Conn.
Maxine E. Butterfield, Lakeland, Fla.
Frank Idner, O. D., West Palm Beach, Fla.
Bert Arrasmith, Macomb, Ill.
Dr. Chas. W. Robison, Stockton, Ill.
Charles E. Cussins, Springfield, Ill.
S. D. Ginsburg, Chicago, Ill.
Milton Ross, O. D., Ottawa, Ill.
Robert S. Leach, DeKalb, Ill.
L. R. Butz, Geneva, Ill.
B. J. Pecaro, Oak Park, Ill.
Harold Forbes, Peru, Ill.
Dr. Parke P. Swan, Granite City, Ill.
Pugh Bros. Jlry., Chicago, Ill.
Tamkin Opticians, Chicago, Ill.
Wm. H. Nieder, O. D., Chicago, Ill.
Ray A. Potter, O. D., Chicago, Ill.
J. W. Dycus, O. D., Mount Vernon, Ill.
Wiley J. Utz, Evansville, Ind.
O. R. Hale, O. D., Indianapolis, Ind.
Thomas W. Dodson, O. D., Villisca, Iowa.
Paul S. Williams, O. D., Manhattan, Kan.
William C. Bradford, O. D., Shreveport, La.
A. W. Carlson, Lake Charles, La.

Robert Fredette, O. D., Westbrook, Maine.
Arthur P. Allen, Brunswick, Maine.
Walter G. Pratt, Boston, Mass.
W. C. Furbush, O. D., Orange, Mass.
Kasimir I. Kozakiewicz, Salem, Mass.
James J. Kelleher, O. D., Brockton, Mass.
George Hart, O. D., Boston, Mass.
Dr. Dix, Detroit, Mich.
L. W. Melstrom, Detroit, Mich.
E. J. Mack, O. D., St. Paul, Minn.
L. E. Holmes, Minneapolis, Minn.
G. L. DuPlessis, O. D., Minneapolis, Minn.
V. P. O'Brien, O. D., Duluth, Minn.
H. J. Poppler, O. D., Red Wing, Minn.
D. W. Platt, O. D., St. Paul, Minn.
Chas. Rudolph, O. D., St. Louis, Mo.
Charles P. Caldwell, O. D., Kansas City, Mo.
H. A. Boehmer, O. D., St. Louis, Mo.
Hugh J. Cassidy, O. D., St. Louis, Mo.
Carl Fuldner, O. D., St. Louis, Mo.
Henry A. Koke, St. Louis, Mo.
A. H. Middleton, O. D., St. Louis, Mo.
E. O. Shoulders, O. D., St. Louis, Mo.
R. A. Slomer, O. D., St. Louis, Mo.
Paul F. Staetter, O. D., St. Louis, Mo.
C. A. Ziegler, O. D., St. Louis, Mo.
Chas. Reilly Optical Co., St. Louis, Mo.
Stafford Jlry. & Opt. Co., Independence, Mo.
N. A. Zuspan, Grand Island, Nebr.
C. B. Strickland, O. D., Omaha, Nebr.
E. R. Jenkins, Gibbon, Nebr.
E. J. Oxford, Chambers, Nebr.
H. I. Reed, O. D., Dover, N. H.
A. F. L. Perreault, Nashua, N. H.
Dr. E. R. McClintock, Dover, N. H.
Robert C. Kennedy, O. D., Elizabeth, N. J.
Norman L. Krellen, O. D., Binghamton, N. Y.
Samuel Balisteri, O. D., Buffalo, N. Y.
1237 Max Stanzler, O. D., Schenectady, N. Y.
Gerald L. Covell, Rochester, N. Y.
Edward A. Berliner, O. D., Brooklyn, N. Y.
W. L. Cassidy, Jordan, N. Y.
Maurice M. Levy, O. D., Rochester, N. Y.
Ralph E. Sweeting, Rochester, N. Y.
Paul Van Drimmelen, New York, N. Y.

Dr. A. H. Earley, Staten Island, N. Y.
Herbert & Huesgen, New York, N. Y.
C. L. Merz, Syracuse, N. Y.
Henry P. Schlueter, Rochester, N. Y.
W. L. Cassidy, Jordan, N. Y.
C. C. Campbell, Jr., Lockport, N. Y.
H. J. Meade, Jamestown, N. Y.
Rudolphs, Rochester, N. Y.
Ring Optical Company, Rochester, N. Y.
B. A. Southerland, O. D., Charlotte, N. C.
Queen Optical Company, Toledo, Ohio
F. W. Staubach, O. D., Toledo, Ohio
J. W. Hubbard, O. D., Cleveland, Ohio
John R. Zellers, Columbus, Ohio.
J. R. Stebbins, O. D., Alliance, Ohio
Fletcher Optical Co., Bristow, Okla.
Thomas Withers, Astoria, Ore.
C. W. Goodman, Portland, Ore.
A. M. Simmons, Klammath Falls, Ore.
Robert E. Lee, Medford, Ore.
Samuel Tyler, Eugene, Ore.
G. Walter Palmer, Baker, Ore.
F. N. Utley, Portland, Ore.
J. D. Rickert, Medford, Ore.
J. J. Wychunas, Girardville, Pa.
Edward Forrey, Lancaster, Pa.
C. S. Kerns, O. D., Jersey Shore, Pa.
John J. Parry, Pottsville, Pa.
Stanley B. Easter, Scranton, Pa.
H. W. Christie, Butler, Pa.
Outlet Company, Providence, R. I.
C. S. Myers, O. D., Winner, S. D.
James G. Carson, Knoxville, Tenn.
Earl S. Clifton, O. D., Morristown, Tenn.
S. M. Carter, O. D., Dickson, Tenn.
L. P. Jackson, O. D., Jackson, Tenn.
C. O. Galloway, Martin, Tenn.
Mr. L. Daiches, Laredo, Texas.
F. H. Williams, Orange, Texas.
Ray M. Johnston, O. D., Dallas, Texas.
Dr. H. B. Cannon, San Angelo, Texas.
Hugh Cannon, El Paso, Texas.
K. E. Clark, O. D., Dallas, Texas.
L. M. Herndon, Wichita Falls, Texas.
L. R. Olmstead, Brownville, Texas.
W. R. Brown, El Paso, Texas.
G. H. Jones, O. D., Greenville, Texas.
F. J. Woods, O. D., McKinney, Texas.
Carl R. Cathey, O. D., Austin, Texas.

Dr. Earl Lewis, Richfield, Utah.
Ethan A. Flanders, O. D., Middlebury, Vt.
A. N. Johnson, Bradford, Vt.
A. E. Cox, Hardwick, Vt.
W. P. White, Burlington, Vt.
W. L. Barnard, O. D., Ludlow, Vt.
F. L. Hunt, Newport, Vt.
Dr. V. H. Eddy, Bethel, Vt.
Everett B. Clark, Norfolk, Va.
Dr. F. D. Jackson, Norfolk, Va.
Clarence Lauerman, Snohomish, Wash.
J. P. Woll, Bellingham, Wash.
B. Commerce, Seattle, Wash.
Glen C. Beal, Wenatchee, Wash.
H. V. Everly, Seattle, Wash.
R. W. Hall, New Martinville, W. Va.
Robert H. Kappelmann, O. D., Milwaukee, Wisc.
J. A. Clough, O. D., Eau Claire, Wisc.
A. Lester Koch, Appleton, Wisc.
Curtis Linsley, Madison, Wisc.
Paul A. Wibbert, O. D., Milwaukee, Wisc.
Harry S. Kurzon, O. D., Milwaukee, Wisc.
Clayton G. Graef, O. D., Milwaukee, Wisc.
A. E. Brendler, O. D., Cheyenne, Wyo.

Stock Licenses Added Since Aug. 1, 1937

G. A. Rasmussen, O. D., Phoenix, Ariz.
J. H. Sohn, O. D., Salinas, Cal.
Carl W. Johnson, Optician, Palo Alto, Cal.
Frank H. Guernsey, O. D., Los Angeles, Cal.
Mr. Robert L. Daniel, San Diego, Cal.
R. E. Walters, O. D., Los Angeles, Cal.
Everett Swanson, O. D., Boulder, Colo.
W. J. Stevens, O. D., Grand Junction, Colo.
G. F. Hellborn, O. D., Denver, Colo.
E. J. Converse, O. D., Greenwich, Conn.
C. H. Tomlinson, O. D., Ansonia, Conn.
Harold F. Bidwell, O. D., West Hartford, Conn.
John Todd, O. D., Hartford, Conn.
M. J. Nolan, O. D., New Haven, Conn.
James W. Hall, O. D., Putnam, Conn.
A. B. Pratt, O. D., Stamford, Conn.
Geo. R. Cronin, O. D., Waterbury, Conn.
H. S. Saunders, Optician, Milford, Del.
George W. Edgar, O. D., Jacksonville, Fla.
H. B. McCoy, O. D., Rome, Ga.
J. F. Gray, O. D., Moscow, Idaho.
J. Hugh Burgess, O. D., Moscow, Idaho.

E. E. Dehler, O. D., Rock Island, Ill.

Jos. C. Morris, O. D. Chicago,, Ill.

O. L. Coder, O. D., Chicago, Ill.

T. G. Petersen, O. D., Chicago, Ill.

W. A. Gustafson, O. D., Joliet, Ill.

Kendrick & Lindblad, Aurora, Ill.

Kendrick & Lindblad, Chicago Heights, Ill.

Kendrick & Lindblad, E. St. Louis, Ill.

Kendrick & Lindblad, Streator, Ill.

Kendrick & Lindblad, Alton, Ill.

Theo. Q. Swanson, Gibson City, Ill.

B. E. Margulius, O. D., Peoria, Ill.

Mr. H. J. Birch, Chicago, Ill.

H. Steinberg, O. D., Chicago, Ill.

Paul J. Carey, O. D., Biddeford, Maine.

David Berlowitz, O. D., Westbrook, Maine.

E. S. Pendexter, Portland, Maine.

M. J. Brooks, O. D., Rumford, Maine.

S. H. Krome, Optician, Baltimore, Md.

Geo. R. Arseneault, O. D., Webster, Mass.

R. M. McMurdo, O. D., Spencer, Mass.

Gerald E. Goodrich, O. D., Haverhill, Mass.

W. S. Dorsey, O. D., Ware, Mass.

The Optical Co., Framingham, Mass.

C. E. Goddard, O. D., Easthampton, Mass.

G. Edward Bradley, Somerville, Mass.

J. A. Pelletier, O. D., Fitchburg, Mass.

W. A. Russell, Worcester, Mass.

L. W. Lunt, O. D., Dorchester, Mass.

1238 Briggs & Briggs, Worcester, Mass.

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Harold C. Ormsby, O. D., Wakefield, Mass.

A. V. Poirier, O. D., Fall River, Mass.

G. M. Lord, O. D., Boston, Mass.

A. F. Hanson, O. D., Southbridge, Mass.

H. F. Fletcher, O. D., Watertown, Mass.

C. Robert Ascha, O. D., Taunton, Mass.

Sam S. Trumpour, O. D., Detroit, Mich.

A. W. Kludt, O. D., Detroit, Mich.

Warner E. Boatwright, O. D., Detroit, Mich.

William Tulpan, O. D., Detroit, Mich.

G. V. Keevil, O. D., Detroit, Mich.

L. J. Kehoe, O. D., Flint, Mich.

J. E. Converse, O. D., Alma, Mich.

T. B. Walton, O. D., Detroit, Mich.

Walter S. McCaughrin, O. D., Detroit, Mich.

R. W. Lowry, O. D., Worthington, Minn.
G. H. Vandesteeg, O. D., Sauk Centre, Minn.
M. S. Lockwood, Minneapolis, Minn.
Dewey M. Larson, O. D., St. Paul, Minn.
Geo. C. S. Campbell, O. D., St. Paul, Minn.
Elmer J. Diehl, O. D., St. Louis, Mo.
Rudolph Meyer, O. D., St. Louis, Mo.
F. E. Savage, O. D., Butte, Mont.
Brunner's, Westfield, N. J.
M. Applestein, O. D., Trenton, N. J.
Ralph L. Clarke, O. D., Maspeth, N. Y.
N. Arluck, O. D., Brooklyn, N. Y.
Harry R. Sifo, Optician, New York, N. Y.
Frank Goldblum, O. D., New York, N. Y.
Harold V. Hutcheson, O. D., Tarrytown, N. Y.
Morris L. Faller, Schenectady, N. Y.
W. W. Powers, O. D., Buffalo, N. Y.
David F. Roese, O. D., Syracuse, N. Y.
Morris W. Lieberman, O. D., Brooklyn, N. Y.
Edward F. Group, O. D., Syracuse, N. Y.
H. H. Brooks, O. D., Syracuse, N. Y.
Pope Optical Co., Ogdensburg, N. Y.
Forrest Optical Co., Buffalo, N. Y.
George V. Spohrer, O. D., Jackson Heights & Sunnyside, N. Y.
Ralph Singer, O. D., New York, N. Y.
Charles S. Putnam, O. D., Elmira, N. Y.
Geo. E. Kellogg, O. D., Elmira, N. Y.
M. L. Warshaw, O. D., Bayshore, N. Y.
Kohnstamm-Wolfe, Inc., New York, N. Y.
M. Ruderman, O. D., New York, N. Y.
Mr. E. L. Forth, Syracuse, N. Y.
Clement Segal, O. D., New York, N. Y.
Delaney & Fuller, O. D.'s, Syracuse, N. Y.
Harold Solodar, O. D., New York, N. Y.
M. S. Greene, O. D., New York, N. Y.
Frederick Stern, O. D., New York, N. Y.
Geo. E. Draeger, O. D., New York, N. Y.
Eleanor Rose, O. D., Brody Opt. Co., New York, N. Y.
Samuel W. Behrmann, O. D., New York, N. Y.
Jos. Lewitt, O. D., New York, N. Y.
Ernest G. Cuffari, O. D., New York, N. Y.
Mr. M. C. Gamble, Elmira, N. Y.
Palmers' Optometrists, Charlotte, N. C.
W. L. Best, O. D., Greenville, N. C.
Precision Optical Disp. Co., Cleveland, Ohio.

Blake D. Faulkner, Blackwell, Okla.

Dr. William G. Ernst, Wilkes-Barre, Pa.

Fegley & Son, Lancaster, Pa.

Chas. W. Murphy, O. D., Philadelphia, Pa.

Mr. C. G. Michener, Philadelphia, Pa.

Dr. I. Mariscal, Pawtucket, R. I.

Stowell Sherman, O. D., Providence, R. I.

Bainton & Hughes, Providence, R. I.

C. C. Johnson, O. D., Spartanburg, S. C.

M. J. Rooney, O. D., Sioux Falls, S. D.

E. Lee Bennett, O. D., Nashville, Tenn.

J. E. Sarrell, O. D., Copperhill, Tenn.

B. F. Nesbitt, O. D., Dickson, Tenn.

Adrian Owens, O. D., Amarillo, Texas.

Edward Broome, O. D., Amarillo, Texas.

A. B. Galo Optical Co., Laredo, Texas.

R. L. Coon, O. D., Port Arthur, Texas.

David Levinson, O. D., Danville, Va.

W. F. Loughnan, O. D., Chehalis, Wash.

John H. Pugh, O. D., Seattle, Wash.

Wm. H. Hennessey, Seattle, Wash.

Schnelle Optical Co., Walla Walla, Wash.

Howard Thomas & Son, Wenatchee, Wash.

Carl H. Strobel, O. D., Madison, Wisc.

Frank R. Parthun, O. D., Racine, Wisc.

G. F. Crain, O. D., Laramie, Wyo.

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L. C. Lewis, O. D., Tuskegee, Ala.

J. W. Stabler, O. D., Atmore, Ala.

Page F. Reed, O. D., Tuscaloosa, Ala.

John M. Langley, O. D., Alexander City, Ala.

J. J. Slappey, O. D., Roanoke, Ala.

W. D. Newberry, O. D., Dothan, Ala.

Patterson's Optometrists, Phoenix, Ariz.

A. G. Pilcher, O. D., Flagstaff, Ariz.

J. Wesley Murphy, O. D., Little Rock, Ark.

Robert F. Downs, O. D., Los Angeles, Cal.

E. L. Moore, O. D., Los Angeles, Cal.

H. Rittenberg, O. D., Los Angeles, Cal.

E. S. Wright, O. D., Bell, Cal.

Harry N. Downs, O. D., Los Angeles, Cal.

Arene T. Wray, O. D., Los Angeles, Cal.

C. Sieghold, O. D., Alhambra, Cal.
V. P. Ervin, O. D., Burbank, Cal.
Harold Gumpert, O. D., Whittier, Cal.
D. V. McQuarie, O. D., Alhambra, Cal.
Harry O. Simmons, O. D., Burbank, Cal.
Ed E. Wood, O. D., Modesto, Cal.
E. S. Takahashi, O. D., Fresno, Cal.
Robert H. Windeler, O. D., Palo Alto, Cal.
G. A. Kelley, O. D., Santa Maria, Cal.
Collins M. Kinney, O. D., Santa Maria, Cal.
Herman Schumacher, O. D., Tulare, Cal.
J. Marx, O. D., Los Angeles, Cal.
Margaret L. Dowd, O. D., Santa Monica, Cal.
G. A. Hutchison, O. D., Los Angeles, Cal.
F. W. Crane, O. D., Los Angeles, Cal.
Mabel A. Smith, O. D., Los Angeles, Cal.
B. D. Hirsh, O. D., Hollywood, Cal.
M. F. Baumgardt, O. D., Los Angeles, Cal.
Walter R. Blakely, O. D., Los Angeles, Cal.
E. Purviance, O. D., Los Angeles, Cal.
1239 P. L. Kinney, O. D., Los Angeles, Cal.
Nellie Vee Richards, O. D, San Jose, Cal.

A. A. Kilton, O. D., Los Angeles, Cal.
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R. A. Hubler, O. D., Porterville, Cal.
Lionel Lewis, O. D., Los Angeles, Cal.
C. L. Emery, O. D., Upland, Cal.
T. R. Jones, O. D., South Pasadena, Cal.
G. A. Carlson, O. D., South Pasadena, Cal.
Rupert E. Flower, O. D., Visalia, Cal.
L. T. Whiting, O. D., Santa Cruz, Cal.
A. R. Reinke, O. D., Oakland, Cal.
F. A. Linsley, O. D., Pueblo, Colo.
G. F. Hellborn, Denver, Colo.
L. W. Hagner, O. D., Delta, Colo.
C. D. Allen & Son, Delta, Colo.
K. Reeves, O. D., La Junta, Colo.
F. D. Fish, O. D., Fairfield, Conn.
Wm. H. Treat, O. D., Derby, Conn.
S. C. Goldfarb, O. D., Winsted, Conn.
E. A. Roure, O. D., Bristol, Conn.
F. A. Gaylord, O. D., New Haven, Conn.
H. F. Armstrong, O. D., New Haven, Conn.
Norwalk Optical Co., South Norwalk, Conn.

Sumner K. Bragdon, O. D., New Haven, Conn.

J. A. Richard, O. D., Dover, Del.

J. Thomas Nelson, O. D., Washington, D. C.

E. M. Ingram, O. D., Winter Haven, Fla.

G. T. Newberry, O. D., Panama City, Fla.

L. C. Cole, O. D., Gainesville, Fla.

B. Gonzales, O. D., Miami, Fla.

Nita D. Coffee, O. D. Bradenton, Fla.

Williams & Ritchie, Milledgeville, Ga.

H. W. Meaders, O. D., Toccoa, Ga.

C. H. Kittrell, O. D., Dublin, Ga.

M. Pless, C. S. Bennett, Inc., Atlanta, Ga.

J. H. Waters, O. D., Sylvania, Ga.

F. E. Morgan, O. D., Richland, Ga.

J. H. Spratling, O. D., Macon, Ga.

Wm. A. Wexler, O. D., Savannah, Ga.

T. A. Bennett, O. D., Danville, Ill.

N. W. Shanebrook, O. D., Rockford, Ill.

Joseph F. Kuss, O. D., Winnetka, Ill.

P. C. Geisel, O. D., Arlington Heights, Ill.

Geo. W. Rochte, O. D., Downers Grove, Ill.

J. A. Rickenbach, O. D., Carmi, Ill.

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D. C. Babcock, O. D., Sterling, Ill.

W. H. Lamb, O. D., Earlville, Ill.

Don A. Frantz, O. D., DeKalb, Ill.

Sam Glorioso, O. D., Chicago, Ill.

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A. R. Pilcher, O. D., Oak Park, Ill.

DeMoure & DeMoure, Peoria, Ill.

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D. A. Niccum, O. D., Effingham, Ill.

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R. S. Buxton, O. D., Murphysboro, Ill.

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W. R. Dale, O. D., Olney, Ill.

D. R. Yoho, O. D., Watseka, Ill.

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L. H. Bainbridge, O. D., Marion, Ill.

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Fred C. Klopfer, O. D., Chicago, Ill.

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E. E. Frisbie, O. D., Butler, Ind.

A. N. Clark, O. D., Muncie, Ind.

R. H. Wisehart, M. D., North Salem, Ind.

N. L. Bastin, O. D., Vincennes, Ind.

C. F. Kappes, O. D., St. Paul, Ind.

J. Ostendorf, O. D., Vincennes, Ind.

Kenneth Kintner, O. D., Mishawaka, Ind.

M. Brown, O. D., Marengo, Iowa.

P. M. Sims, O. D., Clarion, Iowa.

O. A. Royer, O. D., Cherokee, Iowa.

J. Robert Fox, O. D., Sibley, Iowa.

C. E. Nichols, O. D., Clarinda, Iowa.

I. L. Knapp, O. D., Hartley, Iowa.

T. F. Denkhoff, O. D., Davenport, Iowa.

Fred A. Noll, O. D., Lawrence, Kans.

F. W. Parker, O. D., Phillipsburg, Kans.

C. M. Humphrey, O. D., Parsons, Kans.

Frank H. Pardon, O. D., Owensboro, Ky.

C. L. Abell, O. D., Henderson, Ky.

H. E. Wolfe, O. D., Ashland, Ky.

Walter E. Tait, O. D., Covington, Ky.

R. C. Rankin, O. D., Monticello, Ky.

J. M. George, O. D., Thibodaux, La.

S. S. Lewis, O. D., New Orleans, La.

R. Graham Cherry, O. D., Shreveport, La.

F. S. Epps, O. D., Auburn, Maine.

F. LeRoy Bonnie, O. D., Norway, Maine.

L. P. Taillon, O. D., Biddeford, Maine.

R. B. Kibler, O. D., Baltimore, Md.

A. L. Knowles, Baltimore, Md.

Emerson B. Slocum, O. D., Cambridge, Md.

Melvin & Badger Co., Boston, Mass.

R. H. Nott & M. S. Soutra, O. D.'s, Springfield, Mass.

Frank H. Loring, Optician, Boston, Mass.

Max E. Fishelson, O. D., Malden, Mass.

Charles A. Grant, O. D., Boston, Mass.

Lawrence T. Butler, O. D., Wollaston, Mass.

J. A. Gaidis, O. D., and F. A. Pitocchelli, O. D.'s, Lawrence, Mass.

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Alfred J. Roy, O. D., Worcester, Mass.
A. A. Merrill, O. D., Walpole, Mass.
Cotton and Wasserman, Boston, Mass.
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O. S. Gaudette, O. D., Marlboro, Mass.
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H. B. Sofen, O. D., Kalamazoo, Mich.
V. R. Wight, O. D., Cheboygan, Mich.
R. J. Eibler, O. D., Ann Arbor, Mich.
M. J. Rosenthal, Detroit, Mich.
Geo. A. Parks, O. D., Detroit, Mich.
John C. Stephens, O. D., Detroit, Mich.
John A. Ross, O. D., Plymouth, Mich.
LeGresley Optical Shop, Flint, Mich.
1240 A. J. Lippitt, O. D., Highland Park, Mich.
Z. J. Bowski, Detroit, Mich.
Drs. Campbell & Pagel, Detroit, Mich.
Gerson Jewelry Company, Detroit, Mich.
Charles W. Johannes, O. D., Detroit, Mich.
Johnston Jewelry Company, Detroit, Mich.
Kobackers, Flint, Mich.
Wm. Van Steenbergen, Grand Rapids, Mich.
Henry N. Dekker, O. D., Muskegon, Mich.
Connolly Jewelry Company, Pontiac, Mich.
Clayton N. Wulff, O. D., Albert Lea, Minn.
Max H. Schleuder, O. D., St. Peter, Minn.
Ledegar & Holm, O. D's., Minneapolis, Minn.
E. S. Amesbury, O. D., Thief River Falls, Minn.
E. S. Amesbury, O. D., Warroad, Minn.
Roy E. Peterson, O. D., Minneapolis, Minn.
J. A. Lohmer, O. D., Minneapolis, Minn.
C. E. Lundgren, O. D., Minneapolis, Minn.
G. Hendrickson, O. D., Crookston, Minn.

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R. J. Castor, O. D., Waseca, Minn.

L. V. Schultz, O. D., Worthington, Minn.

B. E. & A. M. Anderson, O. D., Minneapolis, Minn.

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Roy W. Angove, O. D., Minneapolis, Minn.

B. F. Albitz, O. D., Minneapolis, Minn.

Mr. M. J. Carter, Minneapolis, Minn.

C. M. Erickson, O. D., Minneapolis, Minn.

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M. O. Rance, O. D., Minneapolis, Minn.

O. Strand, O. D., Minneapolis, Minn.

R. A. Ackerman, O. D., Jackson, Minn.

Chas. Taylor, O. D., Crosby, Minn.

W. J. Goyer, O. D., Brookhaven, Miss.

Turner & Rubin, O. D., Greenville, Miss.

R. A. Fortenberry, O. D., Columbia, Miss.

Carl F. Ehrlich, O. D., St. Louis, Mo.

Earl L. Morrison, O. D., Excelsior Springs, Mo.

H. R. Dorsey, O. D., St. Louis, Mo.

J. Allen Selvidge, O. D., Poplar Bluff, Mo.

O. E. Hensley, O. D., Herculaneum, Mo.

Harley & Son, Ava, Mo.

N. R. Hatfield, O. D., Edina, Mo.

E. L. Hager, O. D., Fairfield, Nebr.

Martha M. Werth, O. D., Minden, Nebr.

Glen Haworth, O. D., Aurora, Nebr.

Claire Pribula, O. D., Perth Amboy, N. J.

John Morey, O. D., Ridgewood, N. J.

Gerard Giordano, O. D., Plainfield, N. J.

Albert A. Ehrlich, O. D., Elizabeth, N. J.

Mr. Ernest F. Birbeck, Camden, N. J.

M. J. Price, O. D., Camden, N. J.

A. Wishnevsky, O. D., Trenton, N. J.

J. Deitz, O. D., Trenton, N. J.

H. J. Wooley, O. D., Lakewood, N. J.

A. Villavecchia, Optician, Union City, N J.

J. N. VanNess, Clinton Opt. Service, Newark, N. J.

C. A. Davis, O. D., Hobbs, N. M.

C. David Thomson, O. D., Gallup, N. M.

Meyer Wexler, O. D., Brooklyn, N. Y.

Mr. Chester Holmes, Mt. Vernon, N. Y.

Mr. Paul Percy, New Rochelle, N. Y.

Mr. Lewis, O. D., Newburgh, N. Y.

Mr. Harry J. Desmond, Albany, N. Y.

Mr. Frank Lavecke, Professional Optical Shop, Yonkers, N. Y.

Gustave Rein, O. D., Endicott, N. Y.

W. C. Juengst, O. D., New York, N. Y.

F. M. Lippmann, O. D., Brooklyn, N. Y.

Wheatley & Spaulding, Inc., Canajoharie, N. Y.

Harold C. Spencer, O. D., Canastota, N. Y.

C. D. Weiss, Brooklyn, N. Y.

Sidney Fischer, O. D., New York, N. Y.

Mr. Angelo S. Nunes, New York, N. Y.

Mitchel Seigel, O. D., Brooklyn, N. Y.

Mr. Howard F. Thompson, New York, N. Y.

Milton Salomon, O. D., Lynbrook, N. Y.

Mr. Benj. J. Steiner, New York, N. Y.

Louis Braunstein, O. D., Woodhaven, N. Y.

Hugh S. Marshall, Opticians, New Rochelle, N. Y.

Harry Cohen, O. D., New York, N. Y.

Allen I. Edles, O. D., New York, N. Y.

H. Gootenberg, O. D., Port Richmond, N. Y.

William F. Small, O. D., Newburgh, N. Y.

R. A. Esslinger, O. D., Hicksville, N. Y.

Gordon R. McKenney, Syracuse, N. Y.

M. R. Zurett, O. D., Syracuse, N. Y.

F. H. Hildreth, O. D., Albion, N. Y.

Mr. Francis Hogankamp, Buffalo, N. Y.

Milton S. Scherr, O. D., Richmond Hill, N. Y.

I. Berk, O. D., New York, N. Y.

Arthur H. Bush, O. D., Rochester, N. Y.

Mr. Stanley G. Sands, Newbergh, N. Y.

Richard Faulkner, O. D., Peekskill, N. Y.

J. J. Cernik, O. D., New York, N. Y.

B. Weisberg, O. D., New York, N. Y.

Fred Annucci, New York, N. Y.

Herbert W. Ritzman, O. D., Concord, N. C.

C. E. Hale, O. D., Rugby, N. D.

A. G. Foogman, O. D., Hillsboro, N. D.

Wm. M. Storey, O. D., Fargo, N. D.

T. C. Pilliod, O. D., Galion, Ohio.

M. L. Pitcock, O. D., Lancaster, Ohio.

H. F. Lingenfelter, Optician, Londonville, Ohio.

Robert C. Jacobs, O. D., Mansfield, Ohio.

H. E. Bernhardt, O. D., Lancaster, Ohio.

J. B. Hutchinson, O. D., Marietta, Ohio.

W. C. Harper, O. D., Caldwell, Ohio.

Hugh E. Nair, Jr., Dayton, Ohio.

W. L. Johnson, Optician, Cleveland, Ohio.

E. P. Nash, O. D., Cincinnati, Ohio.

R. D. Thomas, O. D., Gallipolis, Ohio.

O. C. Gall, O. D., Cincinnati, Ohio.

Howard M. Snyder, O. D., Barberton, Ohio.

H. F. Schipper, O. D., Hamilton, Ohio.

Robert Owens, O. D., Celina, Ohio.

James F. Pocock, O. D., Chillicothe, Ohio.

Wm. Inskeep, O. D., Columbus, Ohio.

B. C. Hensel, O. D., Columbus, Ohio.

Dwight McGuire, O. D., Columbus, Ohio.

R. C. Price, O. D., Marion, Ohio.

B. H. Sanborn, O. D., Middleport, Ohio.

C. V. Stanley, O. D., Ironton, Ohio.

W. I. Haynes, O. D., Newark, Ohio.

Geo. B. Wisden, O. D., Springfield, Ohio.

W. LeRoy Burris, O. D., Washington Court House, Ohio.

H. E. Nair, Sr., O. D., Youngstown, Ohio.

Robert C. Brown, O. D., Wilmington, Ohio.

C. H. Beavers, O. D., Enid, Okla.

W. M. Smith, O. D., Pauls Valley, Okla.

1241 John H. Lorenz, O. D., Portland, Ore.

Alfred Letcher, O. D., Medford, Ore.

C. L. Perkins, O. D., Medford, Ore.

J. Feinberg, O. D., Portland, Ore.

Ella J. Welch, O. D., Portland, Ore.

Mr. B. D. Stewart, Portland, Ore.

T. H. Walter, O. D., Altoona, Pa.

B. L. Levin, O. D., Carlisle, Pa.

Florence R. Stambler, O. D., Jessup, Pa.

R. J. Beitel, O. D., Catasauga, Pa.

H. I. Kistler, O. D., Allentown, Pa.

H. Mitchell Emerick, O. D., Philadelphia, Pa.

Erald R. Welsh, O. D., West Chester, Pa.

Ronald Sharp, O. D., Philadelphia, Pa.

George L. Brown, O. D., Philadelphia, Pa.

Bernard Sherman, O. D., Philadelphia, Pa.

Coulter Optical Co., Philadelphia, Pa.

Ethel E. Kupers, O. D., Philadelphia, Pa.
Rose Feldenkries, O. D., Philadelphia, Pa.
Rita Cianfrani, O. D., Philadelphia, Pa.
M. A. Feine, O. D., Philadelphia, Pa.
Malcolm J. Murphy, O. D., Philadelphia, Pa.
H. Schaeffer, O. D., Philadelphia, Pa.
Robert L. Dewey, O. D., Philipsburg, Pa.
A. V. Anderson, O. D., Philadelphia, Pa.
John A. Murray, Chessman Opt. Co., Pittsburgh, Pa.
M. A. Rhodes, O. D., Johnstown, Pa.
J. M. Shellenberger, York, Pa.
Oscar Kranich, O. D., York, Pa.
Gerald R. Guest, O. D., Norristown, Pa.
Norman A. Zevin, O. D., Lehighton, Pa.
L. M. Hungate, O. D., Souderton, Pa.
Louis Samuels, O. D., Philadelphia, Pa.
R. S. Goodhart, O. D., Easton, Pa.
Milton J. Freiwald, O. D., Philadelphia, Pa.
A. F. Pratt, O. D., Harrisburg, Pa.
S. Polak, O. D., Norristown, Pa.
Wm. Fellman, 2nd, O. D., Philadelphia, Pa.
L. Hurwitz, O. D., Philadelphia, Pa.
Charles Trobman, O. D., Philadelphia, Pa.
J. Krygier, O. D., Philadelphia, Pa.
L. Cruse, O. D., Philadelphia, Pa.
A. Pons, O. D., Upper Darby, Pa.
James Phillips, O. D., Philadelphia, Pa.
A. G. Potts, O. D., Easton, Pa.
W. W. Wright, O. D., Braddock, Pa.
E. J. Kinzie, O. D., Girard, Pa.
Erwin R. Colitz, O. D., Newport, R. I.
David E. Cohen & Barney Moss, Providence, R. I.
Joseph Miller, O. D., East Greenwich, R. I.
G. C. Cooper, O. D., Sumter, S. C.
A. H. Schade, O. D., Greenville, S. C.
O. G. Thompson, O. D., Charleston, S. C.
J. C. Vickers, O. D., Sioux Falls, S. D.
E. H. Locke, O. D., Webster, S. D.
S. H. Jarvis, O. D., Faulkton, S. D.
R. W. Kelner, O. D., Clark, S. D.
E. G. Parham, O. D., Memphis, Tenn.
P. Foster Wall, O. D., Chattanooga, Tenn.
Stanley Block, O. D., Waco, Tex.
S. F. Huneycutt, O. D., Odessa, Tex.
C. C. Murray, Jr., O. D., Crockett, Tex.
H. Hampton, O. D., DeLeon, Tex.

Leo Platt, O. D., Texas City and Galveston, Tex.
R. C. Childress, O. D., Longview, Tex.
T. J. Petty, Fort Worth, Tex.
J. F. Crawford, O. D., Dallas, Tex.
M. L. Norvell, O. D., Corpus Christi, Tex.
J. C. Wedemeyer, O. D., Corpus Christi, Tex.
E. E. Taylor, O. D., Houston, Tex.
Robert L. Kennedy, O. D., Austin, Tex.
I. J. Freid, O. D., Dallas, Tex.
H. L. Noble, O. D., San Antonio, Tex.
H. W. Queen, O. D., Brownswood, Tex.
Hugh F. Webb, O. D., Ogden, Utah.
F. B. Parkinson, O. D., Cedar City, Utah.
Fred S. Dyke, A. D., Barton, Vt.
Richmond Opt. Co., Richmond, Va.
J. P. Taylor, O. D., Emporia, Va.
J. G. Greene, O. D., Richmond, Va.
Harry Fluegge, O. D., Rhinelander, Wisc.
A. B. Schultz, O. D., Wausau, Wisc.
Arthur Pohl, O. D., Milwaukee, Wisc.
Albert Erickson, O. D., Soldiers Grove, Wisc.
Joseph Schaefer, O. D., Milwaukee, Wisc.
H. S. Bostock, O. D., Madison, Wisc.
W. J. Ballinger, O. D., Racine, Wisc.
Fay R. Smith, O. D., New London, Wisc.
N. E. W. Lenz, O. D., Waupun, Wisc.
Trace Christensen, O. D., Stoughton, Wisc.
W. B. Southard, O. D., Rice Lake, Wisc.
Wiegan Bros., Racine, Wisc.
J. Mantell, O. D., Racine, Wisc.
H. A. Hoops, O. D., Black Creek, Wisc.
Estberg & Son, Waukesha, Wisc.
C. G. Hein, O. D., Gillette, Wyo.

1242 *Exhibit 60-6*

CHANGES IN SOFT-LITE LICENSEE LISTS

Soft-Lite Stock Licensees Removed Since April 1, 1938

ARIZONA

Adonna Fleming, Bisbee.

CALIFORNIA

Jones-Pinther & Lindsay, San Francisco.
F. L. Coit, San Jose.
K. H. McPherson, Stockton.
P. K. Kerr, O. D., Ventura.

CONNECTICUT

J. Lustig, Bridgeport.

IDAHO

M. L. Haines, Lewiston.
W. D. Reynolds, Twin Falls.

ILLINOIS

Kendrick & Lindblad, Aurora.
William Beek, Opticians, Chicago.
B. E. Christensen, O. D., Highland Park.
Hattstrom & Sanders, Oak Park.
Hattstrom & Sanders, Wilmette.

INDIANA

Nevin E. Bretz, O.D., Goshen.
V. F. Kring, O. D., Fort Wayne.
G. S. Keller, Indianapolis.

LOUISIANA

H. R. Piccaluga, O. D., New Orleans.

MAINE

David Berlowitz, Westbrook.

MARYLAND

David Shugam, Baltimore.

MASSACHUSETTS

Smith-Currier, Boston.
Durgin's Jlry. & Opt. Store, Worcester.

MICHIGAN

Professional Optical Company, Detroit.

MINNESOTA

M. L. Cohen & Sons, Minneapolis.

MISSOURI

W. B. Pingree, Carthage.

NEW YORK

E. Wagner, Buffalo.
J. H. Maguire, New York City.

OREGON

Dillon Rogers, O. D., Portland.
C. B. O'Neill, Salem.

OHIO

S. L. Weaver, O. D., Youngstown.

PENNSYLVANIA

H. R. Pettit, O. D., Meadville.
Lubins, Philadelphia.
D. T. Reed & Co., Pittsburgh.

RHODE ISLAND

Ward & Ochs, Providence.

TEXAS

W. W. Christopher, O. D., Dallas.

VIRGINIA

J. H. Smith, O. D., Roanoke.

Registered Dispensing Licensees Removed Since April 1, 1938

ARIZONA

F. D. Rockefeller, O. D., Tucson.
L. Skinner, Tucson.

CALIFORNIA

C. V. Morley, Glendale.
J. Leon Hosking, Los Angeles.
Irving Adler, O. D., Los Angeles.
R. J. Carreon, O. D., Los Angeles.
P. B. Davis, Los Angeles.
Nichols Optical Co., Los Angeles.
Albert B. Perel, O. D., Los Angeles.
Lewis G. Sutton, O. D., Los Angeles.
L. Ray Turner, O. D., Los Angeles.
Robert Orr, O. D., Los Angeles.
Sidney R. Unwin, Los Angeles.
Paul Leigh, O. D., Los Angeles.
Wm. J. Bertie, Los Angeles.
M. Bushan, O. D., Los Angeles.
H. S. Boucher, O. D., Los Angeles.
J. L. Nyrin, O. D., Los Angeles.
S. Bronow, Los Angeles.
Joseph Wilson, Long Beach.
Wm. Breig, O. D., Oakland.
N. B. Bailey, Oakland.
F. W. Laufer, O. D., Oakland.
C. Roger Brissman, Ontario.
August Seibach, Pittsburgh.
1243 William A. Meyer, O. D., Sacramento.
Stanley Hymes, O. D., San Diego.
Charles Lerner, O. D., San Bernardino.
R. J. Bandy, San Francisco.
W. R. Johnston Opt. Co., San Francisco.
O. M. Lambert, O. D., Visalia.

COLORADO

W. C. Holiman, Colorado Springs.
H. B. Waters, O. D., Denver.

CONNECTICUT

S. C. Goldfarb, O. D., Winsted.
H. M. Swartfiguer, O. D. Rockville.

DISTRICT OF COLUMBIA

Reliable Eyeglass Shop, Washington.

FLORIDA

Garvin Moore, O. D., St. Petersburg.

GEORGIA

Harrison Optical Company, Atlanta.
Montgomery Optical Co., Atlanta.
John Duff, Wrightsville.

ILLINOIS

V. A. Green, Chicago.
Fred C. Klopfer, O. D., Chicago.
M. A. Marvalli, O. D., Chicago.

C. Franklin Cochran, O. D., Chicago.
C. C. Bailey, Chicago.
Bergson & Co., Chicago.
H. R. Berns, Chicago.
E. R. Bronson, Chicago.
H. R. Cox, O. D., Chicago.
Damen Drug & Optical Co., Chicago.
V. B. Dixson, Chicago.
E. N. Klein, Chicago.
A. F. Laity, Chicago.
W. F. Lehmann, Chicago.
F. T. Loedige, Chicago.
Carl Maggio, Chicago.
J. E. Maurer, Chicago.
R. W. Miller, Chicago.
W. L. Murray, Chicago.
A. J. Pritchard, Chicago.
W. H. Silge, Chicago.
A. Warchalowski, Chicago
H. Wilansky, Chicago.
Sidney Shapiro, Chicago.
W. A. Dreher, Chicago.
O. C. Brunais, Chicago.
C. D. Crawford, O. D., Chicago.
Alfred Johnson, O. D., Chicago.
Arthur Freidman, Danville.
R. F. Stebor, O. D., Elmhurst.
Carl E. Olson, Evanston.
W. D. McGrath, Elmhurst.
J. H. Seitz, Highland.
O. T. Kruse, Jerseyville.
J. C. Schosser, O. D., Kankakee.
J. A. Pappmeier, Litchfield.
W. L. Doelling, Pana.
G. E. Hovenden, Pekin.
W. H. Scott, Peoria.
N. P. Jensen, O. D., Momence.
J. A. Martin, O. D, Quincy.
H. A. Weber, Murphysboro.
Donze-Wagner, E. St. Louis.

IOWA

Grim Optical Company, Cedar Rapids.
C. T. Humpreville, Clarinda.

KANSAS

F. T. Rupert, Anthony.

KENTUCKY

Fred Powers, Ashland.
H. K. Polan, Ashland.

LOUISIANA

Paul Krauss, Lafayette.
Frederic C. Fisher, New Iberia.
Samuel B. Fellman, O. D., New Orleans.
George Grunewald, O. D., New Orleans.
M. E. Lukinovitch, O. D., New Orleans.
Anthony Russo, New Orleans.

MAINE

G. L. Kneeland, O. D., Portland.

MASSACHUSETTS

S. S. Hyde, O. D., Amherst.
Ward C. Lincoln, O. D., Athol.
Melvin & Badger, Boston.
Ernest Howarth, Fall River.
C. E. J. Wilson, Somerville.
Paul Swenson, O. D., Springfield.

MISSISSIPPI

W. P. Kerrington, Belzoni.
C. G. Olson, O. D., Indianola.
Blanche Wickenseimer, O. D., Vicksburg.

MINNESOTA

C. C. Tankel, O. D., Minneapolis.

MICHIGAN

Glenn Hill, Detroit.
Leon Kay, Detroit.

MISSOURI

R. A. Walters, Columbia.
F. J. Pratt, Festus.
Dale Summers, O. D., Jefferson City.
H. W. Hagenah, Kansas City.
Albert B. Laird, O. D., Kansas City.
H. I. Player, Kansas City.
V. D. Hill, Overland.
Harry Diehl, O. D., St. Paul.
O. J. Fritsch, University City.

NEBRASKA

L. P. Johnson, Pawnee City.

1244 NEW MEXICO

David Thomson, O. D., Gallup.

NEW YORK

Harry J. Desmond, Albany.
S. D. Dembo, O. D., Binghamton.
T. J. McConnell, Binghamton.
Gustave Rein, Endicott.
Geo. Zimmerman, Rochester.
W. H. Baird, Rochester.
Fred Annucci, New York City.
Chas. I. Saks, Syracuse.
W. S. Stillman, Syracuse.
Mance & Stein, Syracuse.

NORTH CAROLINA

J. O. Baxter, Fayetteville.

OHIO

J. Gray Collins, East Liverpool.
Geo. S. Wisden, O. D., Springfield.
N. L. Fitzgerald, O. D., Toledo.
Grey Optical Company, Toledo.
Jordan Optical Co., Toledo.
Rogers Optical Co., Toledo.
R. L. Turner, O. D., Toledo.
M. W. Jacobs, O. D., Warren.
R. F. O'Neill, Zanesville.

OKLAHOMA

Edwin O. May, Idabel.
W. A. Bundy, Miami.

PENNSYLVANIA

Chas. D. Hartley, Bellevue.
L. C. Wettling, Bristol.
W. F. Cowell, O. D., Philadelphia.
L. A. Pegel, O. D., Philadelphia.
Strawbridge & Clothier, Philadelphia.
A. L. Levi, O. D., Philadelphia.
A. M. McConnell, Pittsburgh.
J. H. Hellman, Wilkinsburg.
Oscar Kranich, O. D., York.

SOUTH CAROLINA

E. H. Anderson, O. D., Florence.

NORTH DAKOTA

L. H. Branchaud, O. D., Cavalier.
H. L. Winters Co., Minot.

SOUTH DAKOTA

S. V. Malbry, O. D., Flandreau.

NEW JERSEY

M. E. Feingold, O. D., Trenton.

TEXAS

H. M. Hodges, O. D., Georgetown.
H. B. McLaughlin, Houston.
E. G. Eganhouse, Houston.
J. D. Kethley, O. D., Munday.

VERMONT

A. R. Slader & Son, Rutland.

VIRGINIA

V. B. Gilbert, O. D., Richmond.
A. F. Jahnke, Jr., Richmond.
A. J. Metz, O. D., Richmond.
C. H. Rudd, Richmond.

WISCONSIN

Knobloch Optical Service, Milwaukee.
Louis E. Shaw, Racine.

Soft-Lite Stock Licensees Added Since April 1, 1938

ALABAMA

Glenn D. Batteiger, O. D., Birmingham.

CALIFORNIA

Donald Renfro, Bakersfield.
McClure & McCrerry, O. D., Eureka.
J. Corcoran, O. D., Fresno.
Louis Unger, M. D., Los Angeles.
Ralph M. Abrams, O. D., Los Angeles.
Robert F. Skelton, O. D., Los Angeles.
W. W. Burris, Oakland.
Cochran & Winderler, Palo Alto.
Harry J. Ebinger, O. D., Pasadena.
Harry C. Hill, O. D., San Jose.

COLORADO

H. H. Frumess Jlry. & Optical Co., Denver.

CONNECTICUT

Wm. J. Browne, O. D., Bridgeport.

FLORIDA

G. J. Gerson, O. D., Miami.
F. H. Fisher, O. D., Miami Beach.
Ralph F. Mead, O. D., Orlando.
George E. Lyons, O. D., Tampa.

GEORGIA

Wm. A. Wexler, O. D., Savannah.

IDAHO

G. A. Taylor, O. D., Boise.
E. W. Phillips, O. D., Wallace.

ILLINOIS

H. J. Birch, Chicago.
H. G. Oehler, O. D., Chicago.
Jacobs & Jensen, Oak Park.

INDIANA

Indiana Optical Co., Indianapolis.
Earl E. Morris, Muncie.
E. J. Banta, O. D., Seymour.

1245 IOWA

Boll & Lewis Optical Co., Dubuque.

KANSAS

Henry A. Schauf, O. D., Cimmaron.
J. F. Dickson, O. D., Wichita.

KENTUCKY

W. E. Tait, O. D., Covington.

MAINE

D. S. Thompson Optical Co., Lewiston.
The Smith-Somes Co., Portland.
N. T. Worthley, Jr., O. D., Portland.

MASSACHUSETTS

Andrew J. Lloyd Co., Boston.
John DiNapoli, O. D., Medford.

MISSOURI

J. E. Beach, O. D., Clinton.

NEBRASKA

Ralph A. Brommer, Hastings.
Jule Erbhauser, O. D., Omaha.

NEW JERSEY

Sidney Vineburg, O. D., Asbury Park.
Victor Schorr, O. D., Newark.

NEW YORK

Louis K. Brumer, O. D., Brooklyn.
Golden Bros., New York.
John P. Keenan, New York.
Elias J. Margaretten, O. D., New York.
Edward Hommel & Sons, Syracuse.
Krystol Optical Co., Utica.

OKLAHOMA

W. B. Russell, O. D., Altus.

OREGON

L. C. Richey, O. D., Pendleton.

OHIO

J. R. Latta, O. D., Akron.
E. P. Nash, O. D., Cincinnati.

E. B. Renner, O. D., Coshocton.
R. R. Wilson, O. D., New Lexington.
Preston Sadler, Toledo.

PENNSYLVANIA

L. F. Goodin, Allentown.
Harry I. Gross, O. D., Easton.
Hess Bros., Opticians, Erie.
Winfield Donat Co., Philadelphia.
Rice Optical Co., Philadelphia.
Joseph Zentmayer, Philadelphia.
C. Dale Gibson and T. E. England, O. D.'s Pittsburgh.
Kenneth C. Vincentt, O. D., Pittsburgh.
Frichtel & Rink, Scranton.

TEXAS

T. J. Petty, O. D., Fort Worth.
Vision, Inc., Houston.
J. C. Anderson, O. D., Lubbock.
Stanley Block, O. D., Waco.

WISCONSIN

E. D. LaCourse, O. D., Manitowoc.

WYOMING

Calvin H. Hall, O. D., Casper.

Soft-Lite Registered Dispensing Licensees Added Since April 1, 1938

ARIZONA

Charles F. Robert, O. D., Bisbee.

ALABAMA

W. D. Scruggs, O. D., Albertville.
C. W. Hastings, O. D., Anniston.
P. H. Tyler, O. D., Birmingham.
James C. Hewitt, O. D., Birmingham.
J. E. Whitten, O. D., Cullman.

ARKANSAS

C. D. Malone, O. D., Jonesboro.
O. H. Johnson, O. D., Jonesboro.
Maye Morman, O. D., Pine Bluff.

CALIFORNIA

Edward Conwell, O. D., Alturas.
Harry N. Harps, O. D., Bakersfield.
Hynton I. Sharman, O. D., Burlingame.
George L. Aitken, Chico.
G. H. & H. L. Voorhies, O. D.'s, Chico.
W. A. Haskins, O. D., Corona.
W. M. Schofield, O. D., Compton.
Richard H. Witten, O. D., Fresno.
Boris Chaney, O. D., Hollywood.

B. T. Calmson, O. D., Hollywood.
J. M. Shaw, O. D., Hollywood.
Russell J. Macatee, O. D., No. Hollywood.
Kenneth E. Jaques, O. D., Long Beach.
George G. Brassard, O. D., Los Angeles.
S. M. Braff, O. D., Los Angeles.
J. D. Calhoun, O. D., Los Angeles.
A. G. Davidson, O. D., Long Beach.
Wm. C. Avery, O. D., Oakland.
H. E. Baker, O. D., Oakland.
E. A. Coe, O. D., Oakland.
J. DeGloria, O. D., Oakland.
P. S. Newton, O. D., Oakland.
F. J. VanLaw, O. D., Oakland.
Ansel Mello, O. D., Pittsburgh.
Anthony J. Süno, O. D., Pittsburgh.
Geo. N. Douglas, O. D., San Bernardino.
1246 Richard E. Hughes, San Bernardino.
J. E. Hitchcock, O. D., Sacramento.
W. H. Atkinson, O. D., San Francisco.
Julius Behrend, O. D., San Francisco.
A. C. Jackson, O. D., San Francisco.
W. E. Francis, O. D., San Francisco.
J. W. Hymson, O. D., San Francisco.
R. A. Schwarzmann, O. D., San Francisco.
Wm. Schilling, O. D., San Francisco.
A. Livingston, O. D., San Francisco.
T. E. Pinther, O. D., San Francisco.
Ruth T. Rogers, O. D., San Jose.
F. L. Coit, O. D., San Jose.
Ronald Dixon, O. D., San Mateo.
Harry L. Kendall, O. D., Santa Ana.
L. H. McGrance, O. D., Shafter.
R. G. Newcomer, O. D., Santa Cruz.
Wallace Moore, O. D., Stockton.
K. H. McPherson, O. D., Stockton.
Adolph Reader, O. D., Taft.
Forrest Larson, O. D., Turlock.
R. H. Jackson, O. D., Vallejo.
Harold B. Lillie, O. D., Visalia.
A. C. Marcuse, Jr., O. D., Vallejo.
Harold G. Anderson, O. D., Watsonville.

COLORADO

A. J. Stahl, O. D., Denver.
Rene M. Sutton, O. D., Denver.
Sidney Waldman, O. D., Denver.

CONNECTICUT

Harry Goldstein, O. D., Bridgeport.

Robert C. Potts, O. D., Chester.
Raymond A. White, Hartford.
R. E. Montano, Hartford.
W. H. Warmington, O. D., Stafford Spgs.

DISTRICT OF COLUMBIA

The Eyeglass Company, Washington.
Emil O. Hermann, Washington.
Philip Sures, Washington.

GEORGIA

Geo. V. Stephen, O. D., Gainesville.
E. L. Butts, O. D., Milledgeville.
D. G. Keefer, O. D., Thomaston.
A. S. Gibson, O. D., Thomaston.
M. Camin, O. D., Valdosta.

IDAHO

P. A. Simmons, Boise.
M. L. Haines, Lewiston.
C. A. Braun, O. D., Weiser.

ILLINOIS

Geo. A. Rosenthal, O. D., Belleville.
E. O. Schneider, O. D., Chicago.
W. B. MacDonald, O. D., Chicago.
Sidney S. Macy, O. D., Chicago.
Booth Optical Co., Chicago.
Gordon A. Taylor, O. D., Chicago.
H. W. Steinburg, O. D., Chicago.
A. L. VanValkenburg, O. D., Chicago.
J. W. Garrity, O. D., Chicago.
Bernard E. Vodnoy, O. D. Chicago.
J. B. Dickson, O. D., Chicago.
Benson & Scheetz, O. D., Chicago.
Wm. M. Latchford, O. D., Chicago.
A. L. & J. L. Sachs, O. D., Chicago.
Geo. M. Hurysz, O. D., Chicago.
H. Forbes, O. D., Chicago.
S. M. Pizer, O. D., Chicago.
Florence N. Wood, O. D., Chicago.
E. R. Krieger, O. D., Chicago.
Milton Ginsburg, O. D., Chicago.
Ellen L. Colley, O. D., Chicago.
F. M. Stapinski, O. D., Chicago.
M. M. Davidson, O. D., Chicago.
Irving I. Brodsky, O. D., Chicago.
L. H. Jalonack, O. D., Chicago.
Eugene Terry, O. D., Chicago.
Donald L. Gebbart, O. D., Danville.
J. C. Clore, O. D., Decatur.
George H. Post, O. D., Decatur.
D. L. Jerome, O. D., Des Plaines.

James M. Miley, O. D., Dixon.
F. A. Kloke, O. D., Elgin.
Benjamin Katz, O. D., Elgin.
H. J. McKeon, O. D., Galesburg.
Joseph F. Mayfield, Havana.
B. E. Christensen, O. D., Highland Park.
E. M. Bush, Rossville.
E. S. Fellows, O. D., Jacksonville.
C. N. Hendrix, O. D., Kankakee.
R. W. Roper, DOS., Kewanee.
James Molenaar, O. D., Lansing.
R. E. Persons, O. D., Maywood.
C. D. Boyle, Moline.
Wm. A. Grant, O. D., Mt. Vernon.
W. J. Traver, O. D., Oak Park.
D. W. Turner, O. D., Pekin.
Jack Arthur Potter, O. D., Peoria.
Clifford E. Myers, O. D., Rock Island.
W. G. Moore, Wilmette.

INDIANA

W. D. Pfeifer, O. D., Attica.
M. J. Pfeiffer, O. D., Batesville.
C. J. Brockway, O. D., Brookston.
B. G. Sunderland, O. D., Michigan City.
C. W. Kolanczyk, Michigan City.
J. George Bastin, O. D., Monticello.
O. G. Brubaker, M. D., No. Manchester.
Frank W. Bauer, O. D., Plymouth.
K. E. Wedeking, O. D., Rushville.
Chas. N. Schuell, O. D., South Bend.

IOWA

B. E. Sanford, O. D., Cedar Rapids.
M. P. Gleason, O. D., Centerville.
Oleson & Oleson, O. D.'s., Webster City.

1247 KANSAS

Chas. B. Kraft, O. D., Hutchinson.
J. T. Brown, O. D., Newton.
J. C. Rust, O. D., Topeka.
Ira Stutzman, O. D., Winfield.

MAINE

John Russell, O. D., Brunswick.
Oscar G. Miller, O. D., Livermore Falls.
Daniel I. Kornetsky, O. D., Portland.
Malcolm D. Harris, O. D., Presque Isle.
David Berlowitz, Westbrook.

MARYLAND

Arthur V. Adams, O. D., Hagerstown.
Hubert E. Slocum, O. D., Salisbury.

MASSACHUSETTS

E. Richard Post, Amherst.
Wm. V. Emmons, Andover.
R. W. Baker, O. D., Arlington.

Colman Pike, O. D., Athol.
Alfred D. Hanson, O. D., Attleboro.
Vincent E. Sargent, O. D., Boston.
William H. Sneider, Boston.
E. L. Williams, Jr., O. D., Boston.
Philip J. Crotty, South Boston.
I. Greenspan, O. D., Holyoke.
Walter Stoehrer, O. D., Lawrence.
Alfred I. Michelson, O. D., Lynn.
J. E. Robinson, O. D., Middleboro.
F. G. Carr, O. D., Natick.
Thomas E. Sheerin, O. D., New Bedford.
Abraham Cohen, O. D., Quincy.

MICHIGAN

W. M. Hartman, O. D., Caro.
Irving Berris, O. D., Detroit.
Kenneth A. Schulte, O. D., Detroit.
Browns, Inc., Detroit.
L. W. Melstrom, O. D., Detroit.
James Scott, O. D., Detroit.
Paul L. Gentil, O. D., Monroe.
C. J. & E. M. Hathaway, O. D.'s, Pontiac.
Philip Nolish, O. D., Pontiac.
Redmond's, Pontiac.
Thomas Wellman, O. D., Port Huron.
E. C. Tews, O. D., Sault Ste. Marie.
Stanley F. Martin, O. D., Sturgis.
Walter J. Cwiek, O. D., Wyandotte.

MISSISSIPPI

Geo. A. Scott, O. D., Gulfport.

MINNESOTA

Elmer G. Wick, O. D., Rochester.
C. E. Siewert, O. D., Hopkins.
Barney G. Johnson, Minneapolis.
Edwin J. Bower, Minneapolis.
L. L. Stillman, O. D., Minneapolis.
Chas. S. Robinson, O. D., Minneapolis.
Paul W. Hanson, O. D., Sauk Center.
A. Lindahl, O. D., St. Paul.
George H. Olds, M. D., Waseca.

MISSOURI

W. C. Scotten, O. D., Kansas City.
Sam B. Lappeman, O. D., St. Louis.
W. E. Froelker, O. D., St. Louis.
Ross R. Lewin, O. D., St. Louis.
C. D. Coffman, St. Louis.
A. H. Middleton, O. D., St. Louis.
Angelo P. George, O. D., St. Louis.

MONTANA

James & French, O. D.'s, Kalispell.
E. A. Swanz, O. D., Harlowton.
Leon Reed, O. D., Malta.

NEW HAMPSHIRE

Eugene Clough, Manchester.
W. Edward White, O. D., Plymouth.
L. E. Potter, O. D., Rochester.

NEW JERSEY

C. F. Drake, Asbury Park.
Atlantic Optical Co., Atlantic City.
Samuel Shore, O. D., Atlantic City.
Jos. Musianno, O. D., Bridgeton.
J. C. Lamb & H. R. Wolff, O. D.'s, Bridgeton.
F. G. Hoffritz, Englewood.
Edward W. Collins, O. D., Englewood.
G. C. Barnett, Fred Hanle, O. D., Englewood.
R. R. Jaffee, O. D., E. Rutherford.
L. I. Borish, O. D., Freehold.
Hoffritz & Petzold, Hackensack.
Sol M. Gerson, O. D., Millville.
Roy Bedford, Newark.
Ernest Linke, O. D., Orange.
J. J. Brown, O. D., Perth Amboy.
J. Vickery, O. D., Plainfield.
John D'Ippolito, O. D., Vineland.
G. A. Steurer, O. D., Union City.

NEBRASKA

I. W. Medford, O. D., Ainsworth.
C. C. McCray, O. D., Aurora.
Carl H. Elsner, O. D., Crete.
Stephen Spangler, O. D., Fremont.
Wilbur McCluskey, O. D., Ogallala.
F. J. Eagan, O. D., Scottsbluff.

NEW MEXICO

Frank E. Green, O. D., Albuquerque.
Jas. C. Sedgwick, O. D., Las Cruces.

NEVADA

C. J. Littlefield, O. D., Elko.

NORTH CAROLINA

Todd & Todd, O. D.'s, Hendersonville.

1248 LOUISIANA

H. S. Martin, O. D., Gonzales.
Paul H. Floyd, O. D., Lake Charles.
E. A. Greer, O. D., Welsh.

NEW YORK

Zubow & Danziger, O. D.'s, Brooklyn.
H. Cohen, Brooklyn.
Harold S. Booth, O. D., Brooklyn.
J. Brettschneider, M. D., Brooklyn.
Dan G. Albert, O. D., Gouverneur.
Mt. Vernon Opticians, Mt. Vernon.
Morris Schneid, O. D., New York City.
Harold Neuwirth, O. D., New York City.
A. J. Block, O. D., New York City.

Fred D. Richards, O. D., New York City.
Harry Flowerman, O. D., New York City.
George Optical Co., Niagara Falls.
A. O. Smith, Norwich.
W. C. Bauer, O. D., Poughkeepsie.
Elmer Kubitz, Rochester.
Edwin P. Clay, O. D., Syracuse.
T. H. Conklin, O. D., Tuckahoe.

NORTH DAKOTA

E. R. Schuck, O. D., Hillsboro.
J. K. Galloway, O. D., Devils Lake.

OHIO

G. H. Whiteside, O. D., Akron.
R. C. Stedman, O. D., Akron.
W. M. Hale, O. D., Akron.
E. Geffen, O. D., Bedford.
R. E. Sutherland, O. D., Canton.
O. F. Burger, O. D., Cincinnati.
Louis P. Brumn, O. D., Cincinnati.
Frank A. Beiting, Cincinnati.
Irving Kanarck, O. D., Cleveland.
J. E. Fitzgerald, O. D., Cleveland.
Woodrow W. Gygli, O. D., Cleveland.
G. H. Hunter, O. D., Defiance.
Fred L. Nelson, Jamestown.
Joe Case & Fred Blum, O. D.'s, Logan.
Geo. F. Jones, O. D., Salem.
Orville Sparrow, O. D., Toledo.
E. H. Guthman, Toledo.
Bernard C. Rogers, O. D., Wauseon.
J. S. Blocksom, O. D., Zanesville.

OKLAHOMA

John D. Gresham, O. D., Cushing.
Chester B. Emit, O. D., Oklahoma City.
J. K. McClure, O. D., Oklahoma City.
R. D. McKellips, O. D., Ponca City.
Robert J. England, Ponca City.
R. H. Stevens, O. D., Sapulpa.
Fred E. Green, O. D., Skiatook.
C. R. Herron, O. D., Tulsa.

OREGON

C. O. Anderson, Sr., Dalles.
R. L. Clinton, O. D., Marshfield.
O. M. Heacock, O. D., Portland.
F. C. Martin, O. D., Portland.

PENNSYLVANIA

R. E. Shepard, O. D., Erie.
C. C. French, O. D., Erie.
H. S. Krasno, O. D., Forest City.
M. L. McKeone, O. D., Germantown.
L. E. Newland II, Homestead.

William C. Gray, O. D., Indiana.
Louis H. Himes, O. D., Lancaster.
G. Hubschmitt, O. D., Lancaster.
Joseph Abrams, O. D., Philadelphia.
C. L. Colladay, Philadelphia.
Leon Belasco, O. D., Philadelphia.
R. V. Saylor, O. D., Philadelphia.
M. Schiffman, O. D., Philadelphia.
Chas. Mager, O. D., Philadelphia.
Alexander Gordon, O. D., Philadelphia.
Winfield S. Hess, Philadelphia.
Samuel Cutler, O. D., Philadelphia.
Oscar Matous, Optician, Pittsburgh.
Saul Antokolitz, O. D., Pottsville.
C. Paul Cleary, Prospect Park.
G. W. Kuschel, O. D., Scranton.
A. C. Luhr, St. Marys.
Wilson N. Smith, O. D., Towanda.
Howard Barr, O. D., Tyrone.
H. F. Freeman, O. D., West Chester.
Brandon Gearhart, O. D., Wilkes-Barre.
Alfred Meyer, O. D., Wilkes-Barre.
H. M. Ocshier, O. D., W. Springfield.

SOUTH CAROLINA

Aubrey J. Gore, O. D., Conway.
Carl Sanders, O. D., Mullins.

SOUTH DAKOTA

Chas. A. Sauer, O. D., Aberdeen.
John R. Uglum, O. D., Brookings.
E. H. Beatty, O. D., Brookings.

TENNESSEE

Murray C. Woods, O. D., Paris.
Andy House, O. D., Martin.
J. H. Mednikow, O. D., Memphis.

VIRGINIA

J. H. Martin, O. D., Blackstone.

RHODE ISLAND

Alexander W. MacBeth, O. D., Pawtucket.
Leo Jacobson, Providence.
B. Siegal, O. D., Providence.

TEXAS

Thos. D. Cox, O. D., Banham.
Robert Bragg, O. D., Dallas.
W. W. Christopher, O. D., Dallas.
Arthur A. Edwards, O. D., Haskell.
S. G. Werlin, O. D., Houston.
C. C. Barbour, Houston.

1249 J. J. Jacobs, O. D., Fort Worth.

H. B. Cannon, O. D., Fort Worth.

S. E. Ellington, O. D., Linden.

Milton D. Queen, O. D., Longview.

O. C. Young, O. D., Marlin.

Glenn E. Stone, O. D., Munday.

M. Landin, Jr., O. D., Raymondville.

E. T. Jennison, Jr., O. D., San Antonio.

W. A. Johnson, O. D., San Antonio.

W. F. Baber, O. D., Vernon.

V. G. Martin, Jr., O. D., Wichita Falls.

H. M. Smith, O. D., Wichita Falls.

Jerome W. Broughton, O. D., Waco.

Robert L. Queen, O. D., West Columbia.

WEST VIRGINIA

C. E. Eddy, O. D., Huntington.

E. Beatty, O. D., Parkersburg.

G. W. Berisford, O. D., Piedmont.

J. H. Zelliken, Jr., O. D., Wellsburg.

F. M. Pletcher, O. D., Weston.

WASHINGTON

A. E. Solberg, O. D., Everett.

A. E. Hoag, O. D., Mt. Vernon.

Wm. P. Reed, O. D., Mt. Vernon.

W. A. Christie, O. D. Olympia.

H. W. Hull, O. D., Pasco.

C. H. Law, O. D., Seattle.

Joseph Freeman, O. D., Seattle.

C. E. DeMont, O. D., Seattle.

George Chapman, O. D., Seattle.

W. E. Rogers, O. D., Seattle.

Edward Taylor, O. D., Seattle.

H. L. Sussman, O. D., Seattle.

Mary L. Garrett, O. D., Seattle.

G. W. Sletto, O. D., Seattle.

Glascock & Milberg, O. D.'s, Spokane.

A. E. Jones, O. D., Spokane.

M. M. Cohen, O. D., Spokane.

C. D. Sawtelle, O. D., Vancouver.

WISCONSIN

Leo F. Bach, O. D., Berlin.

M. A. Foster, O. D., Black River Falls.

T. O. F. Randolph, O. D., Burlington.

R. L. Guenveur, O. D., LaCrosse.

E. Pagels, O. D., Milwaukee.

Z. H. Freed, O. D., Racine.

WYOMING

J. W. Richardson, O. D., Gillette.

A. R. Olsen, O. D., Laramie.

1250 *Exhibit 60–D*

CHANGES IN SOFT-LITE LICENSEE LIST

Soft-Lite Registered Dispensing Licenses Removed Since January 1, 1939

Dr. Rob Adams, Birmingham, Ala.
P. H. Linehau, O. D., Birmingham, Ala.
W. H. Gray, O. D., Texarkana, Ark.
W. M. Schofield, O. D., Compton, Cal.
C. A. Olson, Kingsburg, Cal.
J. D. Calhoun, Los Angeles, Cal.
Dr. Glenn Nellis, Los Angeles, Cal.
Clara Bell Zelinsky, Los Angeles, Cal.
H. Carroll Nixon, O. D., Oakland, Cal.
L. W. Pierce, O. D., Pomona, Cal.
Paul Leigh, O. D., Redwood City, Cal.
L. V. Somes, O. D., Santa Rosa, Cal.
Paul C. Gillette, Branford, Conn.
L. L. Gregory, Derby, Conn.
Wm. B. Rock, O. D., Washington, D. C.
B. Forrest, O. D., Miami, Fla.
J. W. Taylor, O. D., Sarasota, Fla.
Dr. A. M. Reiter, Albany, Ga.
Dr. Clarence Meyer, Elberton, Ga.
Dr. E. L. Butts, Milledgeville, Ga.
H. W. Fintzel, O. D., Coeur D'Alene, Idaho.
Burgess J. Hugh, O. D., Moscow, Idaho.
P. A. Simmons, O. D., Boise, Idaho.
A. M. Wilton, O. D., Boise, Idaho.
W. P. Reichert, Cairo, Ill.
W. B. MacDonald, O. D., Chicago, Ill.
Julian Shapps, Chicago, Ill.
S. M. Pizer, O. D., Chicago, Ill.
Mr. Thomas Johnston, Chicago, Ill.
Swenson & Pearson, Chicago, Ill.
A. L. Compton, O. D., Marion, Ill.
Joseph F. Mayfield, O. D., Havana, Ill.
E. H. Krebs, O. D., Plainfield, Ill.
D. W. Conner, O. D., Brownstown, Ind.
C. W. Morris, Fort Wayne, Ind.
J. V. Barborka, Denison, Iowa.
A. J. Pierson, O. D., New Hampton, Iowa.
Paul Ketterer, O. D., Independence, Kan.
J. L. Kirkpatrick, O. D., McPherson, Kan.
W. F. Parker, O. D., Phillipsburg, Kan.
C. L. Abell, Henderson, Ky.

Samuel Carleton, New Orleans, La.
Dr. L. A. Fleisch, New Orleans, La.
H. S. Tuminello, O. D., New Orleans, La.
G. Brewster Sedgwick, O. D., Bath, Maine.
Dr. E. P. Ackley, Brunswick, Maine.
Merton L. Vining, O. D., Lewiston, Maine.
David Diamon, O. D., Portland, Maine.
Geo. Brunner, O. D., Baltimore, Md.
A. D. Kersey, O. D., Baltimore, Md.
F. H. Witzke, O. D., Baltimore, Md.
J. Namias, O. D., Fall River, Mass.
M. A. Jenkins, O. D., New Bedford, Mass.
W. S. Thiesfeldt, O. D., Boston, Mass.
Carl A. Nelson, O. D., Worcester, Mass.
E. E. Schulte, O. D., Detroit, Mich.
Dr. Marion Cobb, Jackson, Mich.
Dr. H. J. Heram, Elbow Lake, Minn.
C. B. Ellestad, O. D., Lanesboro, Minn.
Frank Gowitz, O. D., St. Paul, Minn.
E. E. Jones, St. Paul, Minn.
John Keller, St. Paul, Minn.
Schilling Optical Co., St. Paul, Minn.
L. S. Smith, O. D., Kosciusko, Miss.
Drs. Turner & Rubin, Greenville, Miss.
F. G. Gross, O. D., Canton, Mo.
Bachman Opt. Co., St. Louis, Mo.
O. M. Shallow, O. D., Roundup, Mont.
N. C. Morrison, O. D., Fairbury, Nebr.
L. A. Bersee, O. D., Sidney, Nebr.
Alfred Wahlstrom, O. D., Oakland, Nebr.
R. E. Boemig, O. D., Woodsville, N. H.
Joseph H. Shute, O. D., Glassboro, N. J.
F. E. Greene, Albuquerque, N. M.
Willis B. Blee, O. D., Brooklyn, N. Y.
Downey & Murtha, Brooklyn, N. Y.
Fred Engel, O. D., Brooklyn, N. Y.
Lippett Bros., Cooperstown, N. Y.
Claire Barnes, O. D., Dunkirk, N. Y.
Kagan Optical Co., New York, N. Y.
H. Meshel, O. D., New York, N. Y.
B. J. Churchill, Oneida, N. Y.
W. J. Morse Optical Co., Rochester, N. Y.
Kirkland Optical Co., Utica, N. Y.
M. J. Burns, Watervliet, N. Y.
W. B. Fisher, O. D., White Plains, N. Y.
C. G. Conyne, O. D., Mandan, N. D.

Thomas Bros. Optical Co., Cleveland, Ohio.

J. R. Bontley, O. D., Columbus, Ohio.

E. J. Williams, O. D., Columbus, Ohio.

F. E. Billette, O. D., Dayton, Ohio.

Hugh E. Nair, Jr., Dayton, Ohio.

Oscar P. Silverman, O. D., Dayton, Ohio.

E. O. Sterzer, O. D., Dayton, Ohio.

W. Ormsby, O. D., Pierpont, Ohio.

C. M. Wilson, O. D., Salem, Ohio.

Blase & Blase Company, Youngstown, Ohio.

Clarence Howell, Zanesville, Ohio.

Frank Ansel, O. D., Duncan, Okla.

H. S. Browne, M. D., Ponca City, Okla.

Frank A. Freeburger, Portland, Ore.

1251 H. I. Kistler, O. D., Allentown, Pa.

J. H. Lepsch, O. D., Clarion, Pa.

M. A. Rhodes, Johnstown, Pa.

F. C. Ganet, O. D., Newport, Pa.

Harry Lewis, O. D., Philadelphia, Pa.

W. R. Ferrell, O. D., Shavertown, Pa.

A. A. Oehlert, O. D., Stroudsburg, Pa.

Tom C. Hill, O. D., Wilkes-Barre, Pa.

P. N. Jacoby, O. D., York, Pa.

R. W. Kelner, Clark, S. D.

C. G. Blakeslee, O. D., Gettsburg, S. D.

Ralph E. Wick, O. D., Rapid City, S. D.

Dr. Russell Johnson, Memphis, Tenn.

Tri-State Optical Dispensary, Memphis, Tenn.

E. G. Parham, O. D., Memphis, Tenn.

L. R. Omsted, O. D., Brownsville, Texas.

A. A. Nilson, Dallas, Texas.

L. P. Sigler, Dallas, Texas.

C. A. Scates, O. D., Del Rio, Texas.

R. L. Russell, O. D., Farmersville, Texas.

Leo Platt, O. D., Galveston, Texas.

R. H. Austin, O. D., Jacksboro, Texas.

F. A. Cathey, O. D., Hamilton, Texas.

A. Shaver, O. D., Houston, Texas.

J. D. Cassell, O. D., Lempsas, Texas.

H. L. Noble, O. D., San Antonio, Texas.

E. B. Rum, O. D., San Antonio, Texas.

J. W. Broughton, O. D., Waco, Texas.

W. S. Moorefield & Son, Waco, Texas.

T. J. Reeves, O. D., Waco, Texas.

R. I. Lee, O. D., Weatherford, Texas.

E. T. Jennison, O. D., San Antonio, Texas.

S. A. Stevens, O. D., Ogden, Utah.
D. C. James, Salt Lake City, Utah.
F. McFadden, Rutland, Vt.
A. R. Slader & Son, Rutland, Vt.
A. O. Solberg, Everett, Wash.
Wm. P. Reed, Mt. Vernon, Wash.
W. A. Ingalls, O. D., Port Angeles, Wash.
W. W. Vaudell, O. D., Fond du Lac, Wisc.
E. M. Odekirk, O. D., Manawa, Wisc.
L. A. Shawny, O. D., Milwaukee, Wisc.
H. C. Saul, Douglas, Wyo.

Soft-Lite Stock Licensees Removed Since January 1, 1939

Glenn Batteiger, O. D., Birmingham, Ala.
G. A. Rassmussen, O. D., Phoenix, Ariz.
Rose Optical Co., Washington, D. C.
Arthur Ehrmantraut, Miami, Fla.
Ralph F. Mead, O. D., Orlando, Fla.
J. H. Burgess, Moscow, Idaho.
H. C. Barth, O. D., Chicago, Ill.
Dr. L. W. Goldzwig, Noblesville, Ind.
United Optical Co., New Orleans, La.
J. J. Cargill, O. D., Detroit, Mich.
W. A. Rahe, O. D., New York, N. Y.
George V. Spohrer, Sunnyside, N. Y.
E. J. Troendle, O. D., Warren, R. I.
J. H. Moe, O. D. Canton, S. D.
J. C. Anderson, Lubbock, Texas.
Chas. Ragsdale, O. D., Omak, Wash.

1252 *Exhibit 60–E*

CHANGES IN SOFT-LITE LICENSEE LIST

Soft-Lite Stock Licensees Removed Since January 1, 1940

J. B. Goble, O. D., Yreka, Cal.
E. C. Tews, O. D., Sault Ste. Marie, Mich.
Charles B. Swart, O. D., Auburn, N. Y.
R. K. Shuster, O. D., Philadelphia, Pa.
S. H. Weinberger, O. D., Philadelphia, Pa.
Vision, Inc., Houston, Texas.
H. Arch Harbour, O. D., Wichita Falls, Texas.
C-Mor Optical Company, Cedar City, Utah.
Frank R. Parthun, O. D., Madison, Wisc.

Registered Dispensing Licensees Removed Since January 1, 1940

F. A. Gaylord, O. D., New Haven, Conn.
M. S. Shane, O. D., Jacksonville, Fla.
J. E. Payne, Marianna, Fla.
David Love, Decatur, Ga.
Apex Optical Company, Chicago, Ill.
M. M. Davidson, O. D., Chicago, Ill.
Fred A. Ferdinandsen, O. D., Chicago, Ill.
J. W. Garrity, O. D., Chicago, Ill.
H. C. Paul, O. D., Chicago, Ill.
G. W. Giles, O. D., Kewanee, Ill.
J. Hayes, O. D., Calamus, Iowa.
Frank M. Kaup, O. D., Des Moines, Iowa.
Milton N. Smith, O. D., Des Moines, Iowa.
Robert Atlas, O. D., Sioux City, Iowa.
D. B. Phelps, O. D., Waterloo, Iowa.
J. N. McFadden, O. D., Oelwein, Iowa.
J. M. Metcalf, O. D., Lancaster, Ky.
E. Des Bordes, O. D., New Orleans, La.
E. Calmer Adams, O. D., Baltimore, Md.
Sennott & Alperin, Cambridge, Mass.
Lantz Optical Co., St. Cloud, Minn.
F. B. Toussaint, O. D., Kansas City, Mo.
C. L. Moore, O. D., Lincoln, Nebr.
George Corth, O. D., Kearney, N. J.
Louis Newman, O. D., Buffalo, N. Y.
J. P. Simcox, O. D., Buffalo, N. Y.
H. C. Midlam, O. D., Rome, N. Y.
E. B. Vandewater, O. D., Schenectady, N. Y.
Denney's, Wilson, N. C.
W. H. Monahan, O. D., Williston, N. D.
E. B. Stevenson, O. D., North Baltimore, Ohio.
L. J. Reznor, O. D., Port Allegany, Pa.
H. G. Correll, O. D., Allentown, Pa.
E. L. Egolf, O. D., Harrisburg, Pa.
Herman Klein, O. D., Harrisburg, Pa.
I. H. Greenfield, O. D., Philadelphia, Pa.
L. S. Grossman, O. D., Philadelphia, Pa.
J. P. Krevolin, O. D., Providence, R. I.
Cook Optical Company, Knoxville, Tenn.
H. F. Gilmore, O. D., Knoxville, Tenn.
J. J. McGuire, O. D., Knoxville, Tenn.
Leon L. Hoffman, O. D., Memphis, Tenn.
W. W. Christopher, O. D., Dallas, Texas.
H. B. Cannon, O. D., Fort Worth, Texas.
T. A. Tucker, O. D., Fort Worth, Texas.

J. L. Zachary, O. D., Fort Worth, Texas.

A. E. Richmond, O. D., Seymour, Texas.

J. Douglas Watkins, Petersburg, Va.

C. A. Deswick, Delvan, Wisc.

A. E. Harte, O. D., Evansville, Wisc.

Mrs. E. B. Mackenhnie, Hillsboro, Wisc.

E. L. Brill, Milwaukee, Wisc.

A. B. Meyer, O. D., Milwaukee, Wisc.

Frank K. Pollon, O. D., Milwaukee, Wisc.

J. W. Schulenberg, O. D., Milwaukee, Wisc.

J. Mantel, O. D., Racine, Wisc.

Chas. Imig, O. D., Sheboygan, Wisc.

Stock Licensees Added Since January 1, 1940

E. C. Kuhlo, O. D., Montgomery, Ala.

Dorr Optical Company, Beverly Hills, Cal.

Physicians Optical Service, Long Beach, Cal.

Nu-Way Optical Company, San Diego, Cal.

Hunt-Ferrari-Nicolaus, Inc., San Francisco, Cal.

R. M. Stewart, O. D., Yreka, Cal.

Sumner K. Bragdon, O. D., New Haven, Conn.

Preston E. West, O. D., Georgetown, Del.

F. P. Archer, O. D., Miami, Fla.

Chas. Beckwitt, O. D., Miami, Fla.

A. F. Friedman, O. D., Miami, Fla.

Mrs. Ralph F. Mead, Orlando, Fla.

L. B. Mayer, O. D., Sarasota, Fla.

J. C. Duggan, O. D., Atlanta, Ga.

P. N. Huff Optical Company, Carrollton, Ga.

M. D. Gammell, O. D., Chicago, Ill.

W. T. Stevesson, O. D., Chicago, Ill.

Philip V. Steinfeldt, O. D., Galesburg, Ill.

Dehler Optical Store, Moline, Ill.

L. J. Kers, O. D., Quincy, Ill.

J. H. Wilkinson, O. D., Auburn, Ind.

L. N. Goldzwig, O. D., Noblesville, Ind.

1253 Roy G. Bowers, O. D., Osawatomie, Kan.

W. H. Morris, O. D., Russell, Kan.

J. Ottis White, O. D., Baton Rouge, La.

Emerson B. Slocum, O. D., Cambridge, Md.

Fred J. Wright & A. G. Bellmeir, Denton, Md.

Donald W. Horley, O. D., Arlington, Mass.

Union Optical Company, Boston, Mass.

Francis R. Cannon, Leominster, Mass.

Joseph H. Montminy, O. D., Lowell, Mass.

William A. Galvin, O. D., Lynn, Mass.

Hoosac Valley Optical Company, North Adams, Mass.

Clifford H. Lake, O. D., Stoughton, Mass.

B. R. O'Neill, Dispenser, Waltham, Mass.

Robert C. Birmingham, O. D., Adrian, Mich.

J. R. Kelly, O. D., Petoskey, Mich.

A. J. Jean, Sault Ste Marie, Mich.

S. J. Passon, O. D., Austin, Minn.

Ness Optical Company, Minneapolis, Minn.

A. Asleson, O. D., Redwood Falls, Minn.

M. W. Grainger, O. D., Rochester, Minn.

Baer & Skipton, O. D.'s, Kansas City, Mo.

Harold C. Riggert, O. D., Seward, Nebr.

Burton L. Page, O. D., Newark, N. J.

John B. Mitchell, O. D., Auburn, N. Y.

Eagle Optometrists, Brooklyn, N. Y.,

M. J. Kauderer, O. D., Brooklyn, N. Y.

Peoples Opticians, Buffalo, N. Y.

J. Ehrlich & Sons, New York, N. Y.

J. L. Rolfe, O. D., Olean, N. Y.

Independent Optical Company, Rome, N. Y.

G. T. Schieder, O. D., Syracuse, N. Y.

Genesee Optical Co., Rochester, N. Y.

Nat Walker, High Point, N. C.

Maves Optical Company, Grand Forks, N. D.

Ohio Optical Company, Canton, Ohio.

J. J. Curry, O. D., Bowling Green, Ohio.

F. J. Corwin, O. D., Columbus, Ohio.

George A. Spies, O. D., Steubenville, Ohio.

R. Henry, O. D., Philadelphia, Pa.

John W. Cleary, Dispenser, Philadelphia, Pa.

John Hughes Associates, Pittsburgh, Pa.

John A. Murray, O. D., Pittsburgh, Pa.

G. Walter Johnston, O. D., Reading, Pa.

Isadore M. Lipsen, O. D., Pawtucket, R. I.

Felder Smith, O. D., Laurens & Clinton, S. C.

H. M. Bigby, O. D., Newberry, S. C.

W. D. Sullins, O. D., Athens, Tenn.

J. Herman Thomas, O. D., Fort Worth, Texas.

A. G. Jefferson, Disp., Lynchburg, Va.

W. W. Royall, Newport News, Va.

Cunningham & Eaton, O. D.'s, Norfolk, Va.

W. H. Cowardin Sons, Richmond, Va.

L. E. Farnsworth, O. D., Huntington, W. Va.

Ralph L. Hoffman, O. D., Waupaca, Wisc.

Registered Dispensing Licensees Added Since January 1, 1940

G. G. Gilman, O. D., Bisbee, Ariz.

W. A. Perrin, O. D., Berkeley, Cal.

Pearl R. Schnieder, O. D., Grass Valley, Cal.

Ernest Abrams, O. D., Los Angeles, Cal.

R. L. Bennett, O. D., Los Angeles, Cal.

Glen Casgrove, O. D., Los Angeles, Cal.

E. Fox, O. D., Los Angeles, Cal.

Thomas H. McMahon, Jr., Los Angeles, Cal.

Priester Optical Co., Los Angeles, Cal.

W. W. Wells, O. D., Los Angeles, Cal.

Marvin R. Brown, Marysville, Cal.

Robert Moon, O. D., Modesto, Cal.

H. W. Tower, O. D., Petaluma, Cal.

Raymond L. Eng, San Francisco, Cal.

L. A. Olmstead, O. D., San Mateo, Cal.

W. L. Siebert, O. D., Santa Paula, Cal.

U. S. Optical Company, Denver, Colo.

Stephen W. Hall, O. D., Bridgeport, Conn.

Pearl J. Amici, O. D., Bristol, Conn.

S. Silver, O. D., New Haven, Conn.

L. O. Clegg, O. D., Norwich, Conn.

G. Bullock, O. D., Wallingford, Conn.

René Messier, O. D., Waterbury, Conn.

F. D. Gudbaur, O. D., Fort Myers, Fla.

Geo. A. Copeland, Disp., Jacksonville, Fla.

Leonard H. Grunthal, O. D., Jacksonville, Fla.

Adolph Kienast, O. D., Jacksonville, Fla.

C. C. Riles, O. D., Jacksonville, Fla.

F. L. Mathis, O. D., New Smyrna, Fla.

J. F. Brawley, O. D., Orlando, Fla.

H. H. Keene, O. D., St. Augustine, Fla.

T. O. Steele, O. D., Albany, Ga.

A. M. Cole Optical Co., Atlanta, Ga.

R. N. Huff Optical Co., Carrolton, Ga.

C. C. Robinson, Jr., Cedar Town, Ga.

Stephen H. Dillard, O. D., Milledgenville, Ga.

W. G. Harrell, O. D., Waynesboro, Ga.

B. B. Boss, O. D., Winder, Ga.

Henry G. Zilm, O. D., Carlinville, Ill.

J. P. Nelson, O. D., Champaign, Ill.

Albert Wolff, O. D., Chester, Ill.

H. L. Beyer, O. D., Chicago, Ill.

F. Brykowski, O. D., Chicago, Ill.

W. L. Danks, O. D., Chicago, Ill.

Henry J. Dvorak, O. D., Chicago, Ill.
E. Gavlin, O. D., Chicago, Ill.
A. W. Glickson, O. D., Chicago, Ill.
E. F. Graykowski, O. D., Chicago, Ill.
F. V. Hedeen, O. D., Chicago, Ill.
Richard E. Heurlin, O. D., Chicago, Ill.
H. D. Hoover, O. D., Chicago, Ill.
Irving Kernis, O. D., Chicago, Ill.
G. A. King, O. D., Chicago, Ill.
R. R. King, O. D., Chicago, Ill.
A. Leto, O. D., Chicago, Ill.
Melvin Lowe, O. D., Chicago, Ill.
Vivienne Ilg, O. D., Chicago, Ill.
E. Weinberg, O. D., Chicago, Ill.
N. Weisberg, O. D., Chicago, Ill.
C. H. Zircher, O. D., Chicago, Ill.
Herbert J. Wallin, O. D., Chicago, Ill.
Ralph J. Eberhart, O. D., Decatur, Ill.
Don F. Hott, O. D., Decatur, Ill.
John Larkin, O. D., E. St. Louis, Ill.
Robert Silverstone, O. D., Freeport, Ill.
1254 Wilkes E. Brown, O. D., Geneva, Ill.
H. L. Thoreson, O. D., Geneva, Ill.

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Earl C. Jayroe, O. D., Metroplis, Ill.
E. E. Wykoff, O. D., Oak Park, Ill.
L. J. Keis, O. D., Quincy, Ill.
Hoffman & Son, Rockford, Ill.
O. W. Weinstein, O. D., Rockford, Ill.
Geo. A. Roney, O. D., Sullivan, Ill.
C. W. Slaybaugh, Jr., O. D., Taylorville, Ill.
J. H. Wilkinson, O. D., Auburn, Ind.
C. F. Brindel, O. D., Anderson, Ind.
Weaver Optical Company, Anderson, Ind.
J. A. Martindale, O. D., Bloomington, Ind.
Paul F. Conrad, O. D., Evansville, Ind.
M. D. Zehner, O. D., Evansville, Ind.
M. M. Cowing, O. D., Hammond, Ind.
Luther C. Smith, O. D., Indianapolis, Ind.
E. J. Soland, O. D., Indianapolis, Ind.
R. B. Wendt, O. D., Kendallville, Ind.
O. I. Crawford, O. D., Marion, Ind.
J. H. Koegel, O. D., Marion, Ind.
Russell L. Bolyard, O. D., New Haven, Ind.
D. B. Henry, O. D., Seymour, Ind.
Wm. H. Sponsel, Richmond, Ind.
Dale A. Myers, O. D., Cedar Rapids, Iowa.

Paul Arduser, O. D., Dubuque, Iowa.
M. H. Roland, O. D., Dubuque, Iowa.
L. N. Cumming, O. D., Eagle Grove, Iowa.
J. T. Ryan, O. D., Emmetsburg, Iowa.
F. B. Crane & Son, O. D.'s, Mt. Pleasant, Iowa.
Gilbert J. Mueller, O. D., Oelwein, Iowa.
F. F. Hadsell, O. D., Chapman, Kan.
Robert G. Gray, O. D., Ellsworth, Kan.
H. A. Crane, O. D., Fort Scott, Kan.
C. W. Liggett, Fort Scott, Kan.
H. K. and M. Polan, O. D.'s, Ashland, Ky.
Martin G. Bunker, O. D., Frankfort, Ky.
Jas. J. Graves, O. D., Harrodsburg, Ky.
S. M. Younger, O. D., Lexington, Ky.
Joseph Hoellman, O. D., Louisville, Ky.
Robert S. Leach, O. D., Louisville, Ky.
W. D. Walden, O. D., Mt. Sterling, Ky.
J. K. Greer, O. D., Paris, Ky.
A. W. Tuttle, O. D., Winchester, Ky.
A. D. Ostrich, O. D., Lafayette, La.
Henry Tuminello, O. D., New Orleans, La.
Harry Rosenson, New Orleans, La.
M. H. Kohler, O. D., Baltimore, Md.
Leonard G. Otto, Dispenser, Baltimore, Md.
W. C. Clark, O. D., Amesbury, Mass.
William J. Platt, O. D., Boston, Mass.
David J. Alpert, O. D., Brockton, Mass.
A. F. March, Jr., O. D., Concord, Mass.
Harold E. Bessin, O. D., Dorchester, Mass.
Benjamin Bregman, O. D., Dorchester, Mass.
James L. Pickering, Jr., O. D., Framingham, Mass.
A. S. Gulezian, O. D., Haverhill, Mass.
Woodbury & McLeod, Haverhill, Mass.
Dydek Bros., Holyoke, Mass.
Alfred Ellis, O. D., Lynn, Mass.
A. S. & C. A. Woodbury, O. D.'s, Lynn, Mass.
Leslie G. Wright, Jr., O. D., Melrose, Mass.
Donald F. Moriarity, O. D., Northampton, Mass.
M. O. Brand, O. D., Roslindale, Mass.
William S. Fradkin, O. D., Springfield, Mass.
George E. Carvin, O. D., Stoughton, Mass.
Raymond Guillette, O. D., Taunton, Mass.
George J. Young, O. D., Wakefield, Mass.
C. P. Donahue, Winchester, Mass.
B. Millrood, O. D., Wollaston, Mass.
Ralph M. Howard, O. D., Battle Creek, Mich.

Charles G. Wheeler, O. D., Cedar Springs, Mich.

Paul Cohen, O. D., Detroit, Mich.

B. H. Gates, O. D., Detroit, Mich.

Ernest Gaynes, O. D., Detroit, Mich.

Lee Jewelry Co., Detroit, Mich.

P. M. Pollak, Detroit, Mich.

H. H. Saylor, O. D., Detroit, Mich.

Bernard D. Warner, O. D., East Detroit, Mich.

G. C. Williams, O. D., Kalamazoo, Mich.

E. E. Jewell, O. D., Lansing, Mich.

A. E. LaCroix, O. D., Mt. Clemens, Mich.

R. K. Feetham, O. D., Muskegon, Mich.

Lowell E. Rehner, O. D., Tecumseh, Mich.

William I. Friedman, O. D., Wyandotte, Mich.

Don Kelsey, O. D., Vermontville, Mich.

Larson & Larson, O. D.'s, Bemidji, Minn.

Richard Robertson, Jr., O. D., Duluth, Minn.

Dr. J. L. Curtis, Fergus Falls, Minn.

H. E. Sorflaten, O. D., Lake City, Minn.

D. M. Allman, O. D., Minneapolis, Minn.

Schoen & Schoen, O. D.'s, Owatoma, Minn.

Roy D. Cronbaugh, O. D., Flat River, Mo.

Julius A. Krueger, O. D., Kansas City, Mo.

J. I. Owens, O. D., Kansas City, Mo.

Otto Bachman, O. D., St. Louis, Mo.

E. W. Kiefer, O. D., St. Louis, Mo.

Russell M. Koch, O. D., St. Louis, Mo.

O. F. Mende, O. D., St. Louis, Mo.

Floyd L. Lively, O. D., Sedalia, Mo.

C. P. Smith, O. D., Lewistown, Mont.

Mrs. Effie Broyhill, O. D., Dakota City, Nebr.

Sam Taylor, O. D., Durham, N. H.

Allen Weeks, O. D., Caldwell, N. J.

Robert Katz, O. D., Camden, N. J.

L. I. Prager, O. D., Keyport, N. J.

B. Robinson, Disp., Orange, N. J.

R. Loewit, O. D., Paterson, N. J.

H. H. Ciesielski, O. D., Sayreville, N. J.

A. Zielinski, O. D., Trenton, N. J.

Wm. E. Bigelow, O. D., Westwood, N. J.

Theo. V. Nelson, O. D., Las Cruces, N. M.

J. R. Laing, Disp., Bellmore, N. Y.

J. M. Brahams, Brooklyn, N. Y.

V. Brecher, O. D., Brooklyn, N. Y.

Daniel Tansman, O. D., Brooklyn, N. Y.

Bernard Zwerling, O. D., Brooklyn, N. Y.

Mr. S. Balisteri, Buffalo, N. Y.

Abraham Fleck, Buffalo, N. Y.

Sidney Haniford, O. D., Buffalo, N. Y.

M. A. Chaikin, O. D., Flushing, N. Y.

Sherman Tweedy, Disp., Islip, N. Y.

William J. Kuhn; Disp., Mamaroneck, N. Y.

Fred Klingbeil, O. D., Newburgh, N. Y.

Bert Douglas, Disp., New York, N. Y.

Fryxell & Hill, New York, N. Y.

Herberts Optical Shop, New York, N. Y.

F. H. Obenauer, O. D., Norwich, N. Y.

E. H. Stapleton, O. D., Ogdensburg, N. Y.

Charles I. Biederman, O. D., Oneonta, N. Y.

Samuel Liebert, O. D., Portchester, N. Y.

Henry Solomon, O. D., Port Jervis, N. Y.

Hershberg's, Rochester, N. Y.

1255 Anthony Iati, O. D., Rochester, N. Y.

John Potoky, Richmond Hill, N. Y.

Lynn & Kelley, Rome, N. Y.

F. J. Altieri, O. D., Syracuse, N. Y.

Mr. Robert C. Meade, Watertown, N. Y.

Clairmont & Nichols, Inc., White Plains, N. Y.

J. Smith Nifong, O. D., Winston-Salem, N. C.

S. A. Daniels, O. D., Fargo, N. D.

J. H. Kurtz, O. D., Akron, Ohio.

O. P. Kluepfel, O. D., Archbald, Ohio.

M. Franklin, O. D., Bellaire, Ohio.

K. W. Richardson, O. D., Bryan, Ohio.

Fred J. Klein, O. D., Cincinnati, Ohio.

F. E. Reusch, O. D., Cincinnati, Ohio.

R. K. Stoecklin, O. D., Cincinnati, Ohio.

Stanley E. West, O. D., Canton, Ohio.

R. E. Hedges, O. D., Circleville, Ohio.

A. A. Schmidt, O. D., Cleveland, Ohio.

J. R. Bontley, O. D., Columbus, Ohio.

Ben L. Veler, O. D., E. Toledo, Ohio.

C. C. Barchant, O. D., Findlay, Ohio.

C. L. Bernstein, O. D., Lima, Ohio.

G. F. Ockuly, O. D., London, Ohio.

G. W. Pfleiderer, O. D., Marion, Ohio.

Raymond Strimel, O. D., Mt. Vernon, Ohio.

C. F. Jessen, O. D., Oak Harbor, Ohio.

R. H. Zimmerman, O. D., Toledo, Ohio.

M. W. Jacobs, O. D., Warren, Ohio.

M. W. Organ, O. D., Wilmington, Ohio.

L. G. Dean, O. D., Clinton, Okla.

C. H. Dillingham, O. D., Frederick, Okla.

C. D. Haynie, O. D., Thomas, Okla.

O. L. Weeks, O. D., Tulsa, Okla.

Stram Optical Company, Pendleton, Ore.

T. H. Drews, O. D., Allentown, Pa.

H. J. Lewis, O. D., Cannonsburg, Pa.

M. Bloomfield, O. D., Chester, Pa.

E. J. Sherman, O. D., Coatesville, Pa.

S. H. Hostetter, O. D., Harrisburg, Pa.

F. L. Munson, O. D., Mt. Carmel, Pa.

Charles M. Kuhn, O. D., Mt. Pleasant, Pa.

John C. Wicks, O. D., Meadville, Pa.

Arnold Berman, O. D., Philadelphia, Pa.

Albert S. Manashil, O. D., Philadelphia, Pa.

Bernard E. Oestreich, O. D., Philadelphia, Pa.

LeRoy T. Phillips, O. D., Philadelphia, Pa.

Jacob Rosenberg, O. D., Philadelphia, Pa.

B. M. & H. S. Kane, O. D.'s, Pittsburgh, Pa.

Robert Lloyd, O. D., Pittsburgh, Pa.

Anna M. Miller, O. D., Pittsburgh, Pa.

B. W. Neumaier, O. D., Pittsburgh, Pa.

H. J. Sabish, Optician, Pittsburgh, Pa.

W. A. Melvin, O. D., Pittston, Pa.

R. G. Keeport, O. D., Reading, Pa.

A. J. Stief, O. D., Reading, Pa.

D. V. A. Capone, O. D., Bristol, R. I.

I. B. Nemtzow, O. D., Newport, R. I.

Edward F. Morally, O. D., Providence, R. I.

Edward J. Troendle, O. D., Providence, R. I.

B. G. Schiano, O. D., Providence, R. I.

Ralph E. Wick, O. D., Rapid City, S. D.

Charles F. Halbkat, O. D., Watertown, S. D.

B. L. Fienberg, O. D., Kingsport, Tenn.

E. C. Jewell, O. D., Memphis, Tenn.

Jerry Harbour, O. D., Coleman, Texas.

G. M. Sims, O. D., Alpine, Texas.

Carl R. Cathey, O. D., Dallas, Texas.

R. L. Russell, O. D., Farmersville, Texas.

George Palatsky, O. D., Gainesville, Texas.

C. Meek, O. D., Kingsville, Texas.

R. C. Schumann, O. D., New Braunfels, Texas.

H. G. Secrest, O. D., Rankin, Texas.

W. S. Clough, O. D., Seymour, Texas.
A. V. Meagher, O. D., Bennington, Vt.
E. L. Marple, O. D., Hampton, Va.
W. M. Turner, O. D., Petersburg, Va.
S. Edwin Rudlin, O. D., Richmond, Va.
Carl Gellman, O. D., Olympia, Wash.
R. G. Wallace, O. D., Poulsbo, Wash.
Walter A. Jones, O. D., Seattle, Wash.
P. M. Wert, Dispenser, Huntington, W. Va.
N. E. Thompson, O. D., Wheeling, W. Va.
Myron W. Haack, O. D., Evansville, Wisc.
R. W. Blohm, O. D., Mayville, Wisc.
Carrold P. Gaalaas, O. D., River Falls, Wisc.
B. P. Scanlon, O. D., Shawano, Wisc.
R. J. Napientek, O. D., West Allis, Wisc.
Walter B. Fisk, O. D., Greybull, Wyo.

1256 *Exhibit 61*

McINTIRE, MAGEE & BROWN CO.
Wholesale Opticians
Distributors of Bausch & Lomb Products
9th & Sansom Sts.
PHILADELPHIA, PA.

OCTOBER 23, 1939.

Mr. J. HARRY VERNON,
465 W. Ellett Street, Philadelphia, Penna.

DEAR HARRY: We understand you are aware of a Soft-Lite prescription held by Dr. Harry Lewis, who is also the owner of Marcus Rothschild, wholesale opticians.

This, of course, enables Lewis to get Soft-Lites for his cut rate wholesale optical business, and is a very poor set up.

We recommend that Lewis be removed from this prescription licensee list immediately.

Very truly yours,

McINTIRE, MAGEE & BROWN CO.
SAM.

SAKlein: HB.

PHILA., PA., 10/24.

R. G. L.

What Sam says above is true & I agree that all best interests will be served by his removal therefore I O. K. Sam's recommendation. He is inactive anyway.

J. H. V.

Helping to make people think of eyes—through membership in Better Vision Institute.

1257 *Exhibit 62*

CC: JHV.

CC: GD: Please remove him from licensee list, sending him usual cancellation letter—and advising all concerned. RGL.

OCTOBER 27, 1939.

Mr. S. A. KLEIN,
McIntire, Magee & Brown Co.,
9th & Sansom Streets, Philadelphia, Pa.

DEAR SAM: Harry Vernon has sent in to me your letter to him dated the 23rd regarding Dr. Harry Lewis, owner of Marcus Rothschild.

Of course, in view of the circumstances, we are cancelling Lewis' Registered Dispensing License without delay.

With kindest regards,

Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

1258 *Exhibit 63*

REMOVE FROM SOFT-LITE LICENSEE LISTS AT ONCE

OCTOBER 28, 1939.

McIntire, Magee & Brown Co., Sheridan Bldg., Philadelphia, Harrisburg, Pa., Wilkes-Barre, Pa., Reading, Pa., Lancaster, Pa., Easton, Pa.
Berks Optical Co., Reading, Pa., Lancaster, Pottsville.
Reading Optical Co.
North Star Optical Co.
Philadelphia, Pa.
Lehigh Optical Co.
Lehmann Optical Co.
Linden Optical Co.
all Limeburner branches.
Louis Friedlander, Inc.
McClenaghen Optical Co.

Dr. Harry Lewis, Philadelphia, Pa., a Registered Dispensing Licensee (McIntire letter 10/23/39, JHV note same date).

Dr. Harry Lewis who is also owner of Marcus Rothschild wholesale opticians. This enables Lewis to get S-L for his cut-rate wholesale optical business and is a very poor set-up.

We recommend that Lewis be removed from Rx list.

JHV—says what Sam says is true and agree that all best interests will be served by his removal, therefore I O. K. recommendation— He is Inactive anyway.

This account is no longer entitled to Soft-Lite Licensee privileges.

SOFT-LITE LENS CO., INC.,
R. G. LANDIS, *Vice President.*

	Date	By
Notice Received		
Removed from List		
Interoffice Notification		
This Notice Filed		

1259 *Exhibit 64*

OCTOBER 28, 1939.

DR. HARRY LEWIS, O. D.,
702 Chestnut Street,
Philadelphia, Pa.

DEAR DR. LEWIS: The Soft-Lite sales policy was designed to serve and protect effectively the interests of Soft-Lite Licensees.

Naturally the acceptance of a license obligates the Licensee to use a reasonable percentage of Soft-Lite lenses. All Soft-Lite Licensees receive the advantages of the Soft-Lite National Educational Publicity Campaign as well as many other advertising and sales aids. So it is only fair to those Licensees who support the Soft-Lite policies that they should be the recipients of the good-will which they and the Soft-Lite Lens Company engender.

In the rare instances where a Licensee does not observe his obligations to promote the use of Soft-Lite Lenses, it becomes necessary to make other arrangements for the distribution of this quality product.

Therefore, upon the recommendation of our representative in the territory in which you are located, we must ask you to please take notice that, pursuant License Agreement entered into by you with the undersigned, we hereby elect to terminate the License as of November 28, 1939.

Our records show that you were issued a Soft-Lite Identification Plaque #9492. We should appreciate your returning this to us, together with any Soft-Lite advertising or promotional material which you may have.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.

A. F. Immig:mm.

1260 *Exhibit 65*

DR. HARRY H. LEWIS
Optometrist

702 Chestnut Street
PHILADELPHIA, PA.

OCTOBER 31, 1939.

SOFT-LITE LENS COMPANY,
745 Fifth Avenue,
New York City.

Attention: A. F. Innig.

GENTLEMEN: Regarding the matter of Soft-Lite License referred to in your communication of October 28, I want to call to your attention that I have been supplying Soft-Lite Lenses whenever possible.

In cases where doctors prescription are handed to me specifying Soft-Lite Lenses I furnish them and praise its merits; however, on other occasions where the doctor does not specify Soft-Lite, I cannot take the liberty of changing the prescription, and know that you would not want me to jeopardize my name by doing so.

Very truly yours,

HARRY H. LEWIS,
Optometrist.

HHL/EF.

1261 *Exhibit 66*

NOVEMBER 2, 1939.

Mr. S. A. KLEIN,
McIntire, Magee & Brown,
9th & Sansom Streets,
Philadelphia, Penna.

DEAR SAM: With further reference to your letter of October 23rd to Harry and my reply of the 27th, I enclose a copy of a letter just received from Dr. Harry H. Lewis.

It has not been acknowledged and probably the proper procedure is not to acknowledge it. If you think otherwise, however, would appreciate having your advice.

With kind regards,

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: sk.

1262 *Exhibit 67*

McINTIRE, MAGEE & BROWN CO.

Wholesale Opticians

Distributors of Bausch & Lomb Products

9th & Sansom Sts.

PHILADELPHIA, PA.

NOVEMBER 4, 1939.

Mr. R. G. LANDIS,
Soft-Lite Lens Co., Inc.,
745 Fifth Avenue, Squibbs Bldg., New York, New York.

DEAR RAY: This will reply to your letter of November 2, about Dr. Harry H. Lewis, of this city, whose license you have just cancelled.

I agree with you it may be just as well to ignore Dr. Lewis' letter, and not acknowledge it.

With best wishes,

Very truly yours,

McINTYRE, MAGEE & BROWN CO.
SAM.

S. A. Klein: HB.

Helping to Make people think of eyes—through membership in Better Vision Institute.

1263 *Exhibit 68*

RIGGS OPTICAL COMPANY

WACO, TEXAS

3/28/39.

SOFT-LITE LENS CO.
745 Fifth Avenue, New York City.

GENTLEMEN: Referring to your letter of March 15th in which you have listed undesirable accounts for Soft-Lite lenses:

W. S. Moorefield & Son, Waco.
T. J. Reeves, Waco.
J. W. Broughton, Waco.

We are listing one other name, as you will notice, Dr. J. W. Broughton. These accounts have no intention of using Soft-Lite lenses other than duplication purposes. We feel as though their License should be revoked.

For your information, T. J. Reeves and J. W. Broughton are doing considerable bate advertising and do not maintain prices on licensed merchandise, therefore we feel that they are undesirable accounts.

Yours very truly,

RIGGS OPTICAL COMPANY,
KENNETH SMITH, *Mgr.*

KLS/MUA.

1264 *Exhibit 69*

REMOVE FROM SOFT-LITE LICENSEE LISTS AT ONCE

APRIL 1, 1939.

RIGGS OPTICAL COMPANY,
Merchandise Mart Bldg., Chicago, Ill.

c—Waco, Texas.

Your letter 3/28/39 (attached).

Atlas Optical Co., Henry Hennessey, D. S. T., sent copy of attached letter.

W. S. Moorefield & Son, Waco, Texas, T. J. Reeves, Waco, Texas, J. W. Broughton, Waco, Texas, Registered Dispensing Licensees.

This account is no longer entitled to Soft-Lite Licensee privileges.

SOFT-LITE LENS CO., INC.,
R. G. LANDIS, *Vice-President.*

	Date	By
Notice Received		
Removed from List		
Interoffice Notification		
This Notice Filed		

1265. *Exhibit 70*

RIGGS OPTICAL COMPANY

DISTRIBUTORS OF BAUSCH & LOMB PRODUCTS

ROCO

58 East Washington Street - Sixth Floor - Garland Building
Telephone State 9232

CHICAGO, ILLINOIS, *Feb. 28, 1940.*

SOFT-LITE LENS CO., INC.,
745 Fifth Ave., New York, N. Y.
(Attention: Miss G. Dewey.)

DEAR MISS DEWEY: We are advised that Dr. J. W. Garrity, to whom you refer in your letter of the 23rd, is no longer with Chapin's Optical Company, but is now associated with Goldblatt's.

As this is a cut-rate firm, we suggest that Dr. Garrity's Soft-Lite license be cancelled.

Please advise what action you are taking.

Thank you.

Yours very truly,

RIGGS OPTICAL COMPANY,
M. ONSGARD.
M. Onsgard.

MO.

1266 *Exhibit 71*

COLONIAL OPTICAL COMPANY, INCORPORATED

MASTER SERVICE

Distributors of Bausch & Lomb Products

110 Tremont Street

BOSTON

AUGUST 10, 1939.

SOFT-LITE LENS COMPANY, INC.,
745 Fifth Avenue, New York, N. Y.

GENTLEMEN: We are pleased to inform you that last week the good old State of Maine successfully passed a Corporate Practice Law pertaining to the Optical business. At this writing practically all of the Optometrists, having worked for the Chain or Jewelry stores, are now looking for locations to open up their own business.

One man, however, Dr. E. P. Ackley, 98 Main Street, Brunswick, Maine, holding a license for your protected products, has decided to test the constitutionality of the Law, and has gone to work for Day's Jewelry Corporation stores in the State of Maine, one of the worst chiseling outfits in the Country.

We have checked very definitely to make sure of this statement, and our Branch Manager has talked with the Doctor personally, so there would be a clear understanding as to his intentions.

Under the circumstances we feel you should immediately revoke his license, and therefore, we make this recommendation.

Yours very truly,

COLONIAL OPTICAL COMPANY, INC.
L. LEITCH.

LL: ED.

1267

1268

Exhibit 73

RIGGS OPTICAL COMPANY
CHICAGO, ILLINOIS

JANUARY 31ST, 1940.

MR. RAY LANDIS,
Soft-Lite Lens Company, Inc.,
745 Fifth Avenue, New York, N. Y.

DEAR RAY: I have before me an advertisement appearing in the Houston newspaper under the name of Beacham & Nesmith Optical Service, which as you know are the people who own Vision, Inc., and under which I believe the Soft-Lite license is being carried.

They are advertising glasses complete, single vision as low as $6.50, bifocals as low as $11.50.

This advertising activity is causing many of our Soft-Lite users to question what value there is in a Soft-Lite license when people like the above continue to appeal for more business on a cut-rate basis.

Under the circumstances, I believe it would be in order to ask for the cancellation of their Soft-Lite license.

With kindest regards, remain,

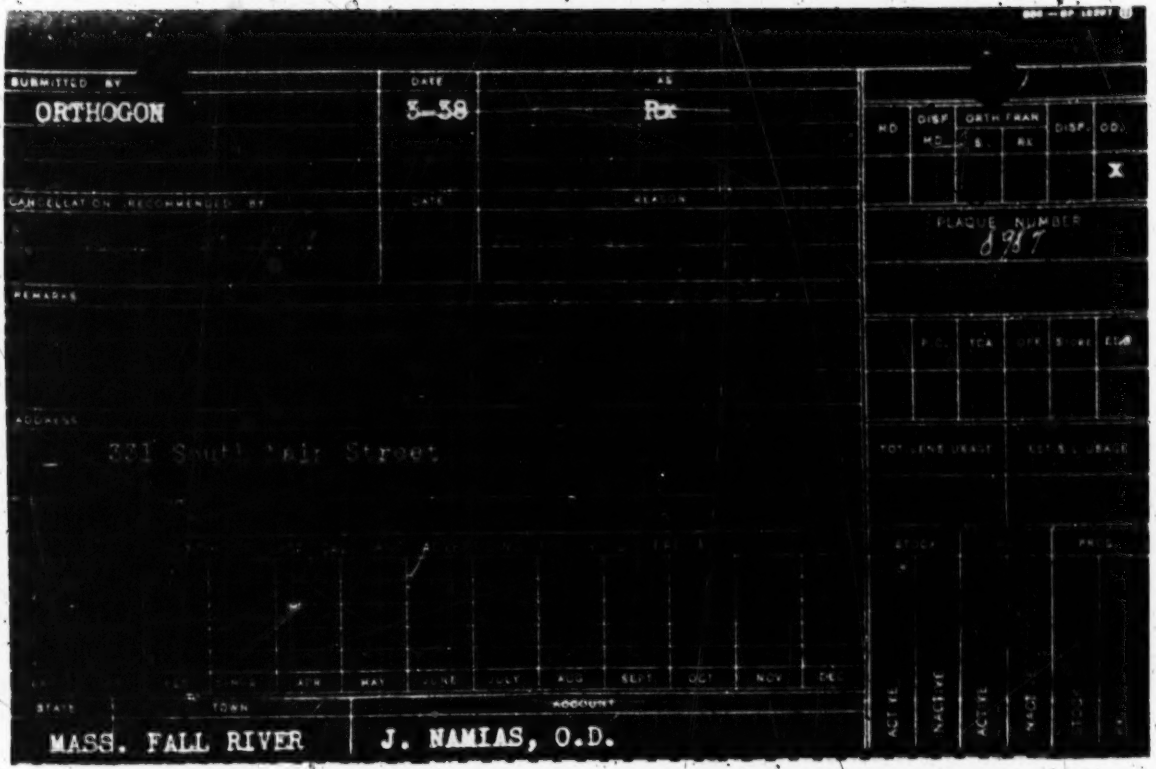
Sincerely,

RIGGS OPTICAL COMPANY.

(signed) A. R. SCHRADER.

A. R. Schrader.

ARS: mo.
2/2/40—c.


SUBMITTED BY
ORTHOGON
DATE
3-38
AS
Rx
CANCELLATION RECOMMENDED BY
DATE
REASON
REMARKS
ADDRESS
331 South Main Street
STATE
MASS.
TOWN
FALL RIVER
ACCOUNT
J. NAMIAS, O.D.
MO
DISP
MO
ORTH FRAN
S
RX
DISP.
OD
X
PLAQUE NUMBER
8937
JAN
MAY
JUNE
JULY
AUG
SEPT
OCT
NOV
DEC
ACTUAL
NAGLE
ACTUAL
NAGLE
TOTAL
UNITED STATES VA. BAUSCH & LOMB OPTICAL CO. ET AL. 7916

SUBMITTED BY | DATE | AS
Stock

CANCELLATION RECOMMENDED BY | DATE | REASON
GWR-Colonial-Schutz | 6/30/38 - uses cut-throat methods
cheap merchandise very undesirable

REMARKS
As far as our records show we never did have this as Soft-Lite account but Colonial had him listed as a S-L account (See correspodence on subject)

ADDRESS
975½ Broadway

STATE | TOWN
N.Y. | BUFFALO | E. WAGNER, O.D.

MD | DISP. MD | C. $ | JAN. REG. | DISP. | OC.
X

PLEASE PRINT

791d UNITED STATES BAUSCH & LOMB OPTICAL CO. N.Y.

SUBMITTED BY: McIntire

DATE:

AS: ~~RF~~

CANCELLATION RECOMMENDED BY: J.H.McIn 9/7/38

DATE: 9/7/38

REASON: Dept. now conducted by people not in

REMARKS: accord with our policies.

ADDRESS: 6th & Market Streets,

MO	DISP. MO	ORTH FRAN $	ORTH FRAN #	DISP.	OD.

PLAQUE NUMBER: 6416

	P.C.	TCA	OFF	Bydac	EDG
~~X~~					

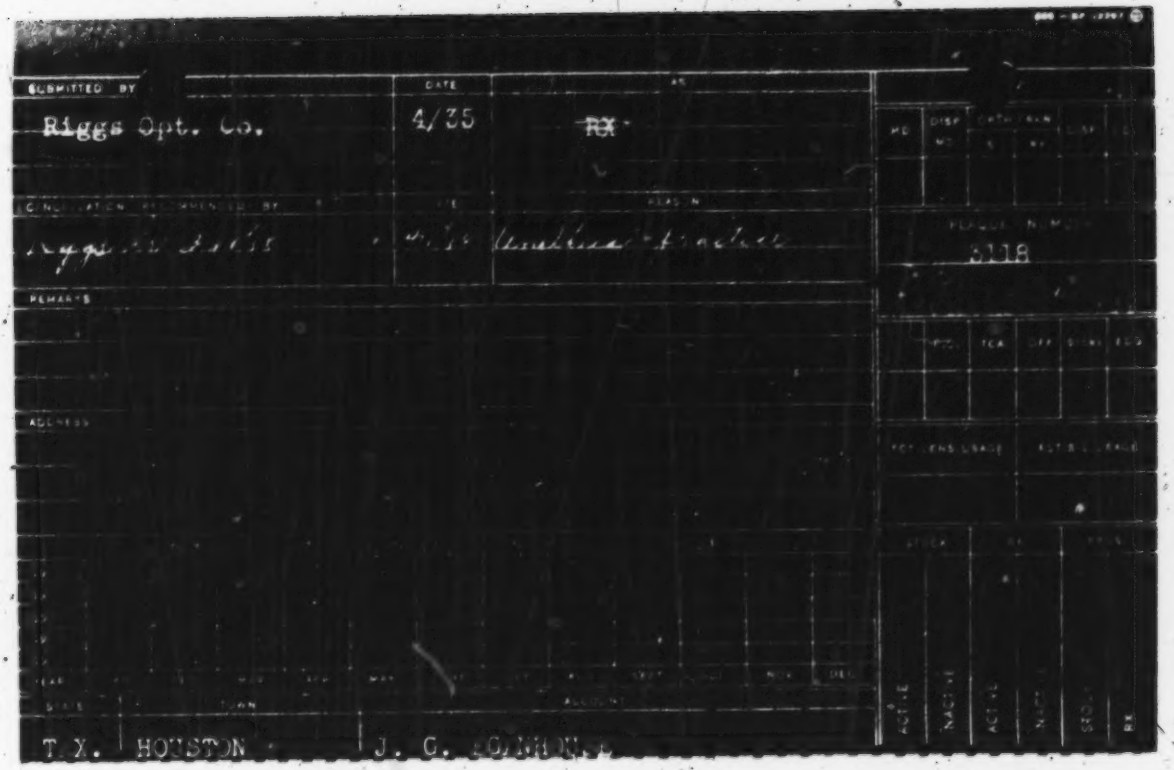
TOT. LENS USAGE | EST. B-L USAGE

MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)

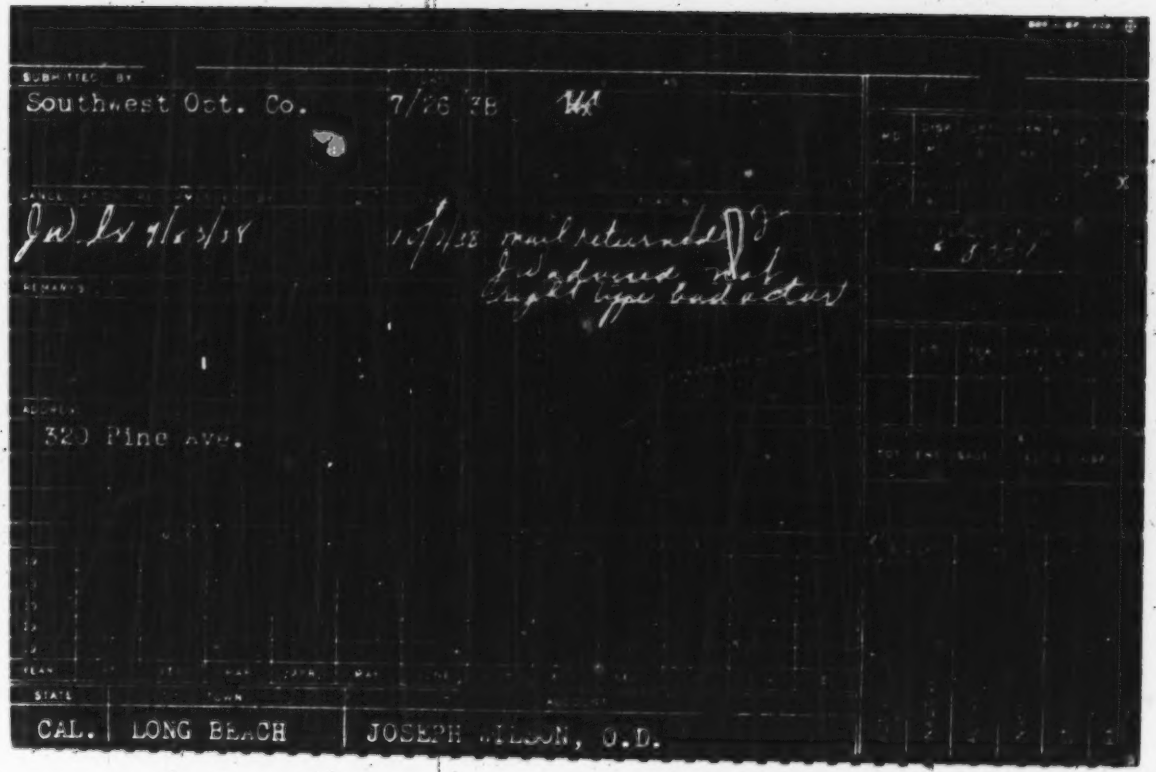
YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19	7											
19												
19												
19												
19												

STOCK		RX		PROS.	
ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	RX

STATE	TOWN	ACCOUNT
PA.	PHILADELPHIA	STRAWBRIDGES & CLOTHIER


SUBMITTED BY
Riggs Opt. Co.
DATE
4/35
RX
3118
T.X.
HOUSTON
J. C.

291 UNITED STATES BATCH & LENS OPTICAL CO. ET AL.



SUBMITTED BY: E. W. Arnolds

DATE:

AS: F

CANCELLATION RECOMMENDED BY:

DATE:

REASON: [illegible] change to play golf [illegible]

REMARKS: [illegible]

ADDRESS: 220 West 1st Street,

MONTH OF LAST CALL AND ADVERTISING FOLLOW-UP (RED)

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19				✓				✓				
19												
19												
19												
19												

STATE	TOWN	ACCOUNT
CAL.	LOS ANGELES	DR. S. BRONOW

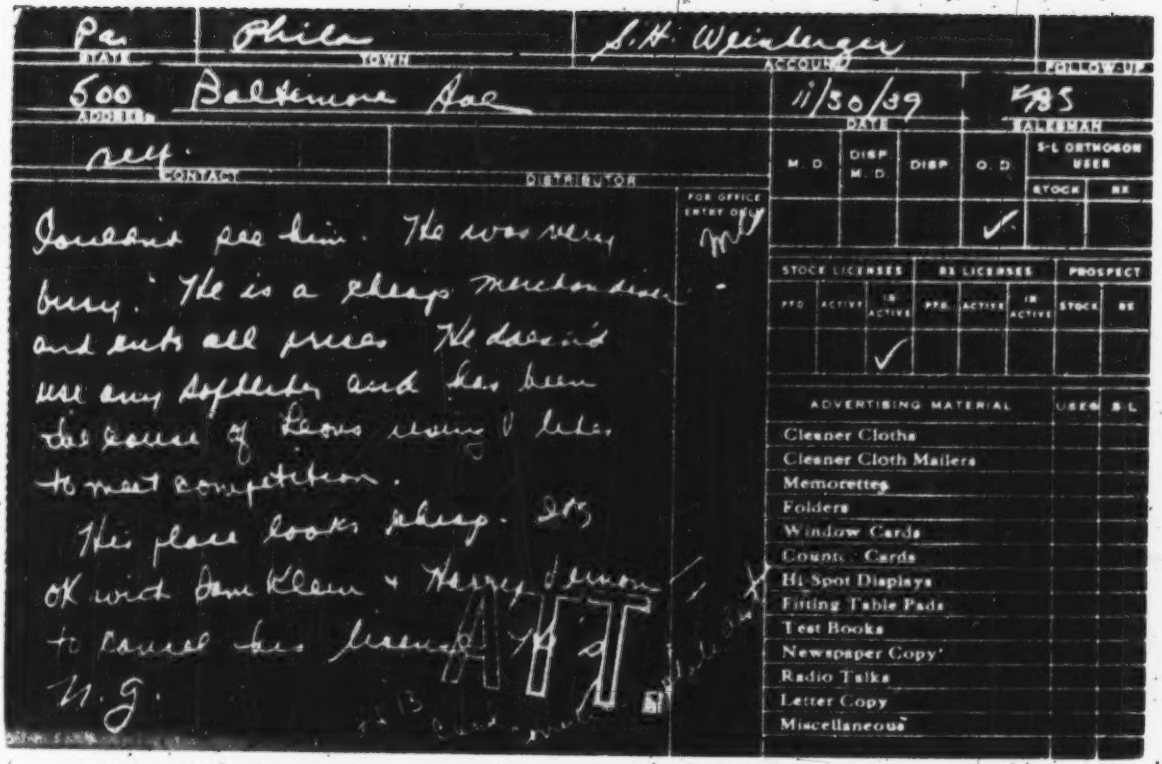
MD	DISP MD	DISP FRAM S	DISP FRAM RX	DISP.	CD.

PLAQUE NUMBER: 2559

	F.C.	TCA	OFF	SIGNS	EDG
	✓			✓	

TOT. LENS USAGE	EST. B-L USAGE

STOCK		RX		PROS.	
ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	RX



Pa. | Phila. | S.H. Weisberger | 500 | Baltimore Ave | 11/30/39 | 535
RATE | TOWN | ACCOUNT | FOLLOW UP | ADDRESS | DATE | SALESMAN

self
CONTACT | DISTRIBUTOR

M.D.	DISP M.D.	DISP.	O.D.	S-L ORTHOGON USER	
			✓	STOCK	RX

STOCK LICENSES			RX LICENSES			PROSPECT	
PFD	ACTIVE	IN ACTIVE	PFD	ACTIVE	IN ACTIVE	STOCK	RX
		✓					

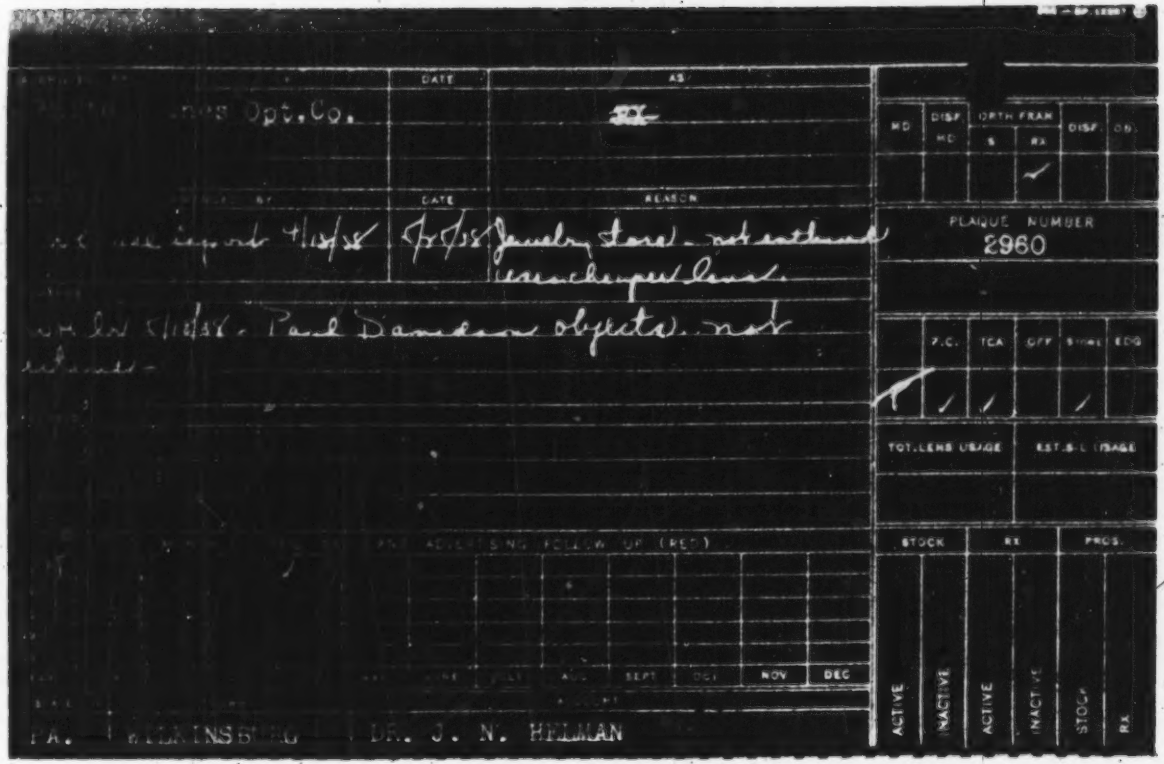
FOR OFFICE ENTRY ONLY

Jonesed per him. He was very busy. He is a cheap merchandiser and sells all prices. He does not use any supplies and has been the source of leaks causing us lots to meet competition.

This place looks cheap. OK with Sam Klein & Harry Lemon to cancel his license. A H T

H.J.

ADVERTISING MATERIAL	USED	S-L
Cleaner Cloths		
Cleaner Cloth Mailers		
Memorettes		
Folders		
Window Cards		
Counter Cards		
Hi Spot Displays		
Fitting Table Pads		
Test Books		
Newspaper Copy		
Radio Talks		
Letter Copy		
Miscellaneous		


DATE
AS
Opt.Co.
DATE
REASON
PLAQUE NUMBER
2960
DR. J. N. HELMAN
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX

1278 *Exhibit 75*

RIGGS OPTICAL COMPANY

DISTRIBUTORS OF BAUSCH & LOMB PRODUCTS

ROCO

Fourteenth Floor — The Merchandise Mart
Telephone Superior 6351

CHICAGO, ILLINOIS, *August 25, 1939.*

Mr. R. G. LANDIS,
Soft-Lite Lens Company,
Squibb Building, New York City, New York.

DEAR RAY: We have received word from T. J. Mitchell that Dr. F. C. Cathey, of Hamilton, Texas, has become a price advertiser, and, consequently, due to his activity along that line and his inactivity in selling Soft-Lites, he should be removed from the Soft-Lite license list.

Mayhap, you have had similar information reported to you previously and will want to take immediate action. Let us hear from you.

With best wishes, remain,
Sincerely,

RIGGS OPTICAL COMPANY.
GUS.
A. R. SCHRADER.

ARS/s.

1279 *Exhibit 76*

CC: T. J. Mitchell, Riggs Optical Company, Dallas, Texas.

AUGUST 28, 1939.

Mr. A. R. SCHRADER,
Riggs Optical Company, 1449 Merchandise Mart,
Chicago, Illinois.

DEAR GUS: In accordance with the information contained in your letter of August 25th regarding Dr. F. C. Cathey, of Hamilton, Texas, we are cancelling his prescription license. This license, incidentally, according to our records, has been inactive for quite some time.

Thanks for the information, Gus.

With very best regards.
Sincerely,

SOFT-LITE LENS COMPANY, INC.

RGLandis: lck.

SUBMITTED	DATE	AS
Hilber Dpt. Co.	2/39	~~Rx~~

CANCELLATION RECOMMENDED BY	DATE	REASON

REMARKS

ADDRESS

c/o Stewart & Co.

MD	DISP. MD	CLIP FRAM S	CLIP FRAM RX	DISP.	OD
					X

PLAQUE NUMBER
11993

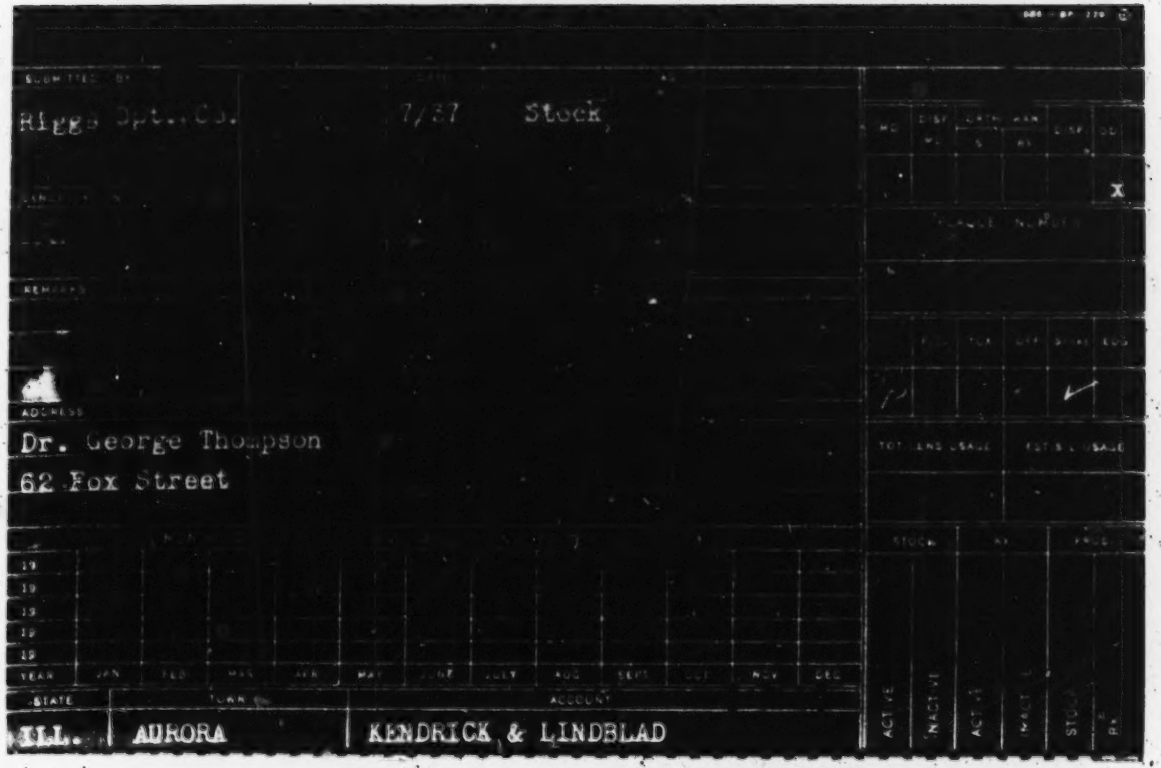
	P.C.	TCA	OFF	Bydee	EDG
P					

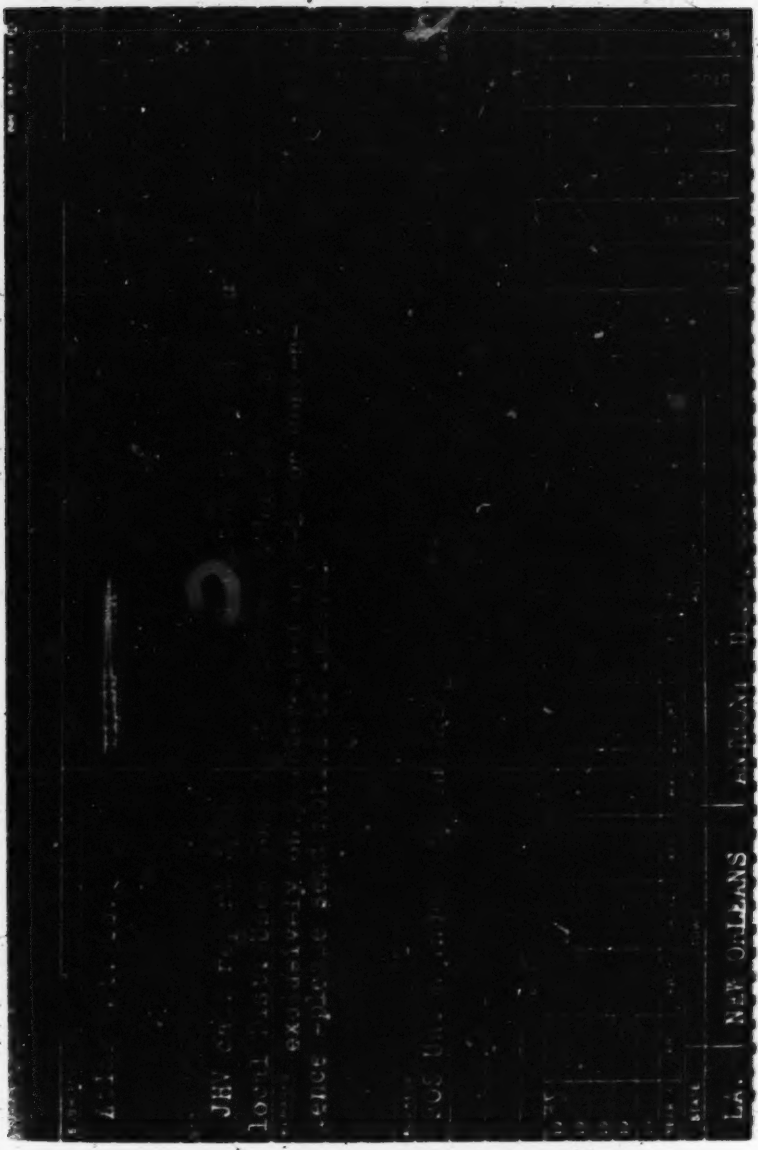
TOT. LENS USAGE	EST. B L USAGE

	STOCK		RX		PLUS	
	ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	RX
19						
19						
19						
19						
19						

YEAR ... JAN FEB MAR APR MAY JUNE JULY AUG SEPT OCT NOV DEC

STATE	TOWN	ACCOUNT
MD.	BALTIMORE	E. CALMAR ADAMS, O. D.


Riggs Opt. Co.
7/37
Stock
X
Dr. George Thompson
62 Fox Street
ILL.
AURORA
KENDRICK & LINDBLAD


LA.
NEW ORLEANS

ANN. ANTHONY
F. I. CO. Cal., U.S.A.



1285 *Exhibit 79.*

APRIL 27, 1939.

From: R. G. Landis.

To: E. T. Summers, % Bausch & Lomb Optical Co., 5 North Wabash Avenue, Chicago, Illinois.

DEAR ED: Will you please call on Swenson & Pearson, of 935 Belmont Avenue, Chicago, Illinois, who are Prescription Licensees, originally sold through Riggs. Advise them that their license is being cancelled because of their violation of the clause restricting them to the sale of Soft-Lite Lenses at retail only to the consumer.

For your information, The Reliable Optical Stores, of Lynchburg, Virginia, an undesirable type of concern, have been supplying Soft-Lite Lenses and, incidentally, the store whose source of supply we have been trying to trace for some time. You will remember I discussed this matter with you some time ago and it was felt that they might be receiving their supply originally from Riggs—through some account in Wisconsin.

They were shopped on a Univis trifocal, Soft-Lite No. 3. These were ordered through Chicago, made up in tinted Univis and supplied to the Reliable Optical Company by Swenson & Pearson. The Soft-Lite protection certificate No. 0133015 was supplied with this job, which constitutes a very flagrant violation of the Soft-Lite license policy in supplying a protection certificate to a non-Licensee and without the lenses supplied being Soft-Lite. This certificate number is that of Riggs.

The Reliable Optical Stores were then shopped again for a half pair of single vision lenses. A genuine Soft-Lite was supplied at a cut retail price and protection certificate No. 0302045 was included. This is Schroeder-Miller's number.

Advise Schroeder-Miller and Riggs that you are taking this action and please report any details, as a result of your call and we will then send a formal removal letter to Swenson & Pearson.

They have identification plaque No. 2726, which I would appreciate your picking up together with any other advertising material they may have.

Best regards.

Sincerely,

RGLandis: lck.

Air Mail—Special Delivery.

1286 *Exhibit 80*

CC: JHV.
CC: Reliable Optical Stores Legal File.

MAY 4, 1939.

Mr. S. R. CLAYMAN,
The Southeastern Optical Company, Inc.,
P. O. Box 2460, Roanoke, Virginia.

DEAR SAM: You will be glad to know that we took action in having our Chicago representative call on Swenson & Pearson of Chicago who personally cancelled this account's Soft-Lite license. This action was taken as a result of their unauthorized supplying of Soft-Lite Lenses to the Reliable Optical Stores.

We hope, in view of this action, that we have been successful in stopping this source of supply for Soft-Lite Lenses, and we will be very glad to take whatever other action may be necessary should the situation come up again.

I am enclosing our check in the amount of $15.83 covering the single vision Soft-Lite lens and the pair of Duo-Site bifocals ordered by you in this shopping investigation.

You will be interested to know, Sam, that we have a line on the No. 4 shade Duo-Site bifocal blanks which may have been used in filling the order which was obtained from the Reliable Optical Stores. However, we have not as yet finished tracing them and so cannot give you further information at the moment.

Will you, Sam, please advise the Soft-Lite Licensees who have been complaining about our cancelling of the Swenson & Pearson license and let them know very definitely that we are anxious to take any and all action that is desirable in protecting their and our interests?

We appreciate very much your excellent assistance in this matter and thank you.

With kindest personal regards,
Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

RGLandis: lck. (encl).

1287 *Exhibit 81*

MAY 4, 1939.

G. D.:

Please remove from our list the account named Swenson & Pearson, prescription licensees in Chicago.

In your letter to them say "At the request of our representative—" etc.

Notify all concerned re this removal—and, of course, E. T. Summers.

Thank you.

R. G. L.

1288 *Exhibit 82*

COLONIAL OPTICAL COMPANY, INCORPORATED

MASTER SERVICE

Distributors of Bausch & Lomb Products

110 Tremont Street

BOSTON

NOVEMBER 13, 1939.

SOFT-LITE LENS COMPANY, INC.,
745 Fifth Avenue, New York, New York.

GENTLEMEN: When David Diamon, of Portland, Maine, purchased the Murdock business we recommended him for a Soft-Lite license, and to continue selling these lenses.

At that time we were a little skeptical as to his future, and we made out a questionnaire, one of the questions being, Do you intend to do wholesale work for anyone? His answer was definitely no.

We have been suspicious of his actions lately, and confidentially we learn through his shopman, a former employees of ours, that he has been supplying Days' Jewelry, a chain outfit through the State of Maine, as well as others, with protected products. In other words, doing a little wholesale work in his shop.

We are, therefore, recommending that he be taken from the Loxit, Soft-Lite, and Panoptik list.

Yours very truly,

COLONIAL OPTICAL COMPANY, INC.,
L. LEITCH.

LL: Ed.

1289 *Exhibit 83*

NOVEMBER 15, 1939.

Mr. L. LEITCH,
Colonial Optical Company, Inc.,
110 Tremont Street, Boston, Massachusetts.

DEAR MR. LEITCH: We wish to acknowledge receipt of your letter of November 13th regarding David Diamon of Portland, Maine, who purchased the Murdock business.

We are holding it for Mr. Landis' attention upon his return to the office early next week. He is now in Columbus attending the Optical Wholesalers' Convention there.

With best wishes,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

lck.

1290 *Exhibit 84*

NOVEMBER 21, 1939.

"Soft-Lite's 32nd Year"

Mr. L. LEITCH,
Colonial Optical Company,
110 Tremont Street, Boston, Massachusetts.

DEAR LEW: While I was in your New York office recently, the matter of the Diamon license came to my attention. I made a note then to check up further on it and noticed upon my return from Columbus your letter of the 13th in which you recommend that their various licenses be cancelled.

We shall be very glad to cooperate by so doing. However, since Fred Slosson will be in Maine next week, I am referring the matter to him so that we can cancel the licenses on the basis of his recommendations as our representative. This keeps Colonial out of the picture, although I don't know whether in this particular case this is important.

With kind regards,

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

RGLandis:sk.

1291 *Exhibit 85*

11/29.

G. D.:

Go ahead and cancel this license "on recommendation of our representative in the territory."

R. G. L.

1292 *Exhibit 86*

REMOVE FROM SOFT-LITE LICENSEE LISTS AT ONCE

JUNE 23, 1939.

Riggs Optical Company, Merchandise Mart Bldg., Chicago, Illinois.
H. D. Palmer Optical Co.
Dow Optical Co., Chicago, Bloomington.
Miller Optical Co.
Fox Optical Co.
Schroeder-Miller.
Bartels Optical Co.

E. T. S. memo 6/21/39 answer to attached letter from R. G. L. As requested by R. G. L., I called on Dr. Barth and advised him that his Soft-Lite Stock License was cancelled. As you may know he was supplying Soft-Lites to the Reliable Optical Stores, Lynchburg, Virginia.

Please advise Dr. Barth and all Chicago wholesalers that his license has been cancelled.

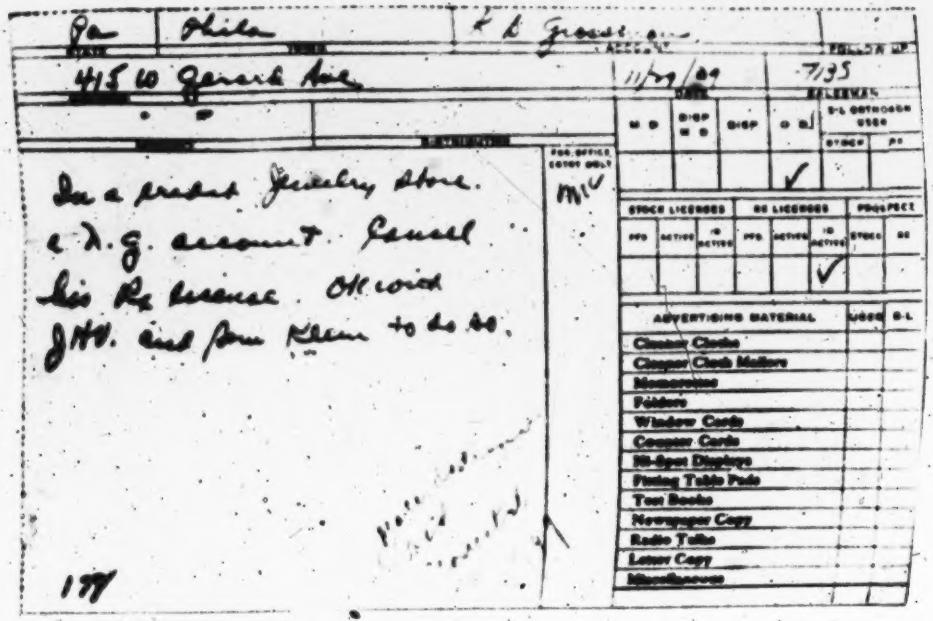
Dr. H. C. Barth, 204 W. 63rd St., Chicago, Illinois, a Soft-Lite Stock Licensee.

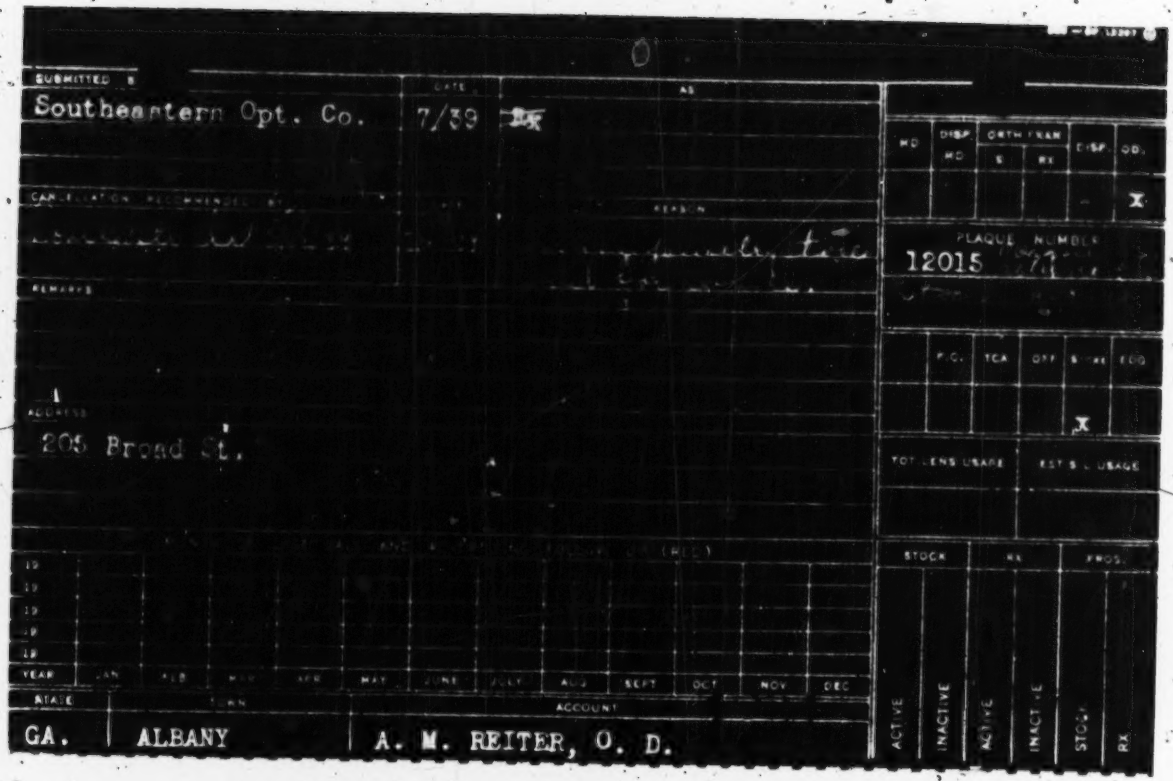
This account is no longer entitled to Soft-Lite Licensee privileges.

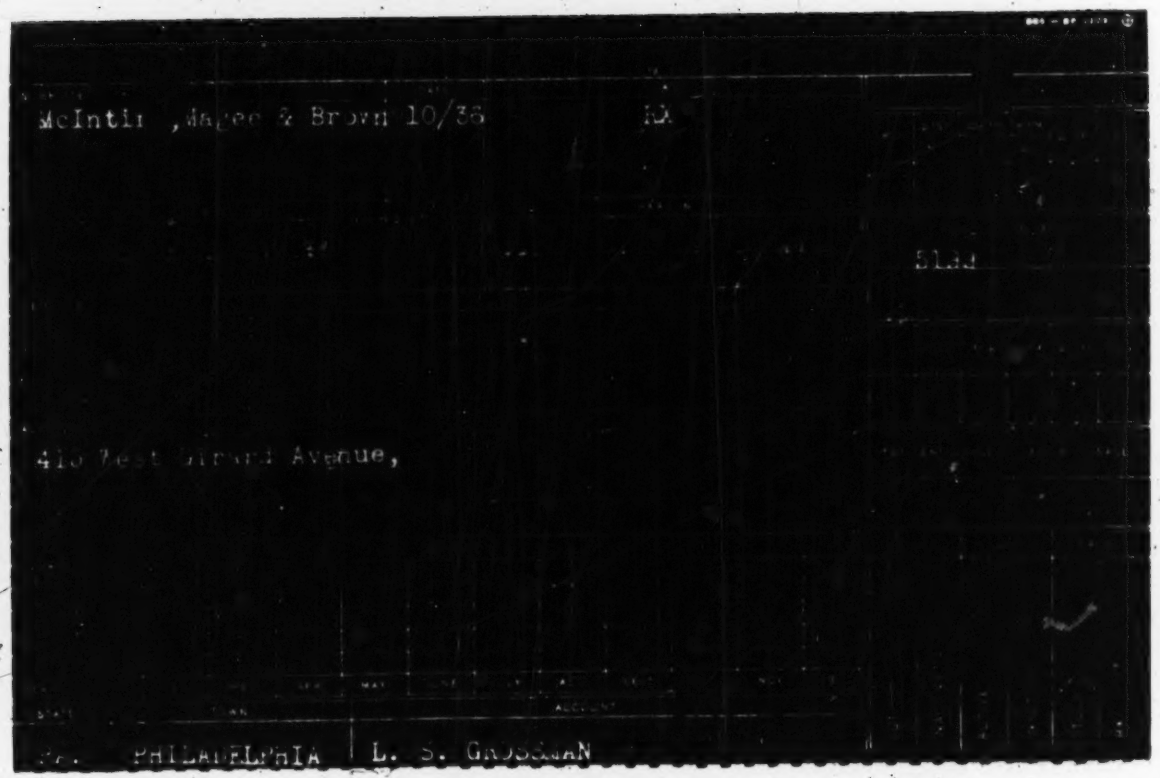
SOFT-LITE LENS CO., INC.,
R. G. LANDIS, *Vice President.*

ETS.

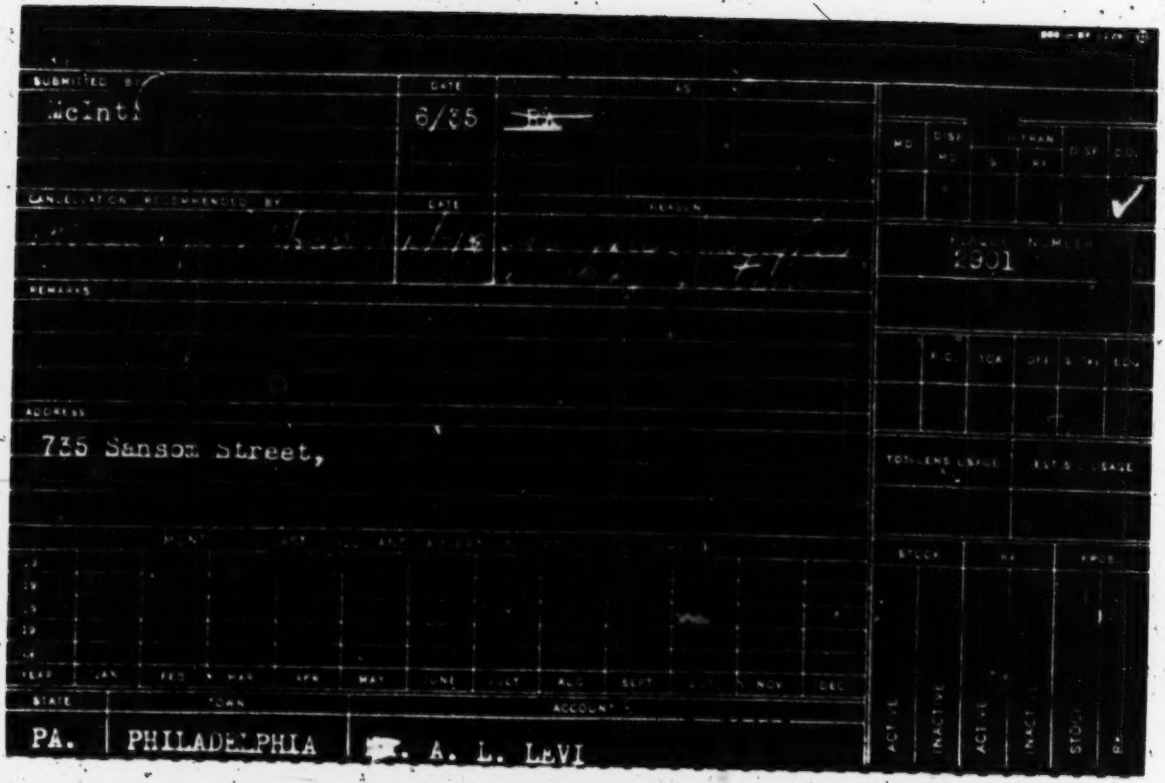
	Date	By
Notice Received		
Removed from List		
Interoffice Notification		
This Notice Filed		


Pa
Phila
415 10 General Acc.
11/29/29
7/35
Do a prudent Jewelry store.
e.g. account Consult
Lic Re Insurance. Oh! void
JHW. and Sam Klein to do so.
177
STOCK LICENSES
SO LICENSES
ADVERTISING MATERIAL
Cleaner Cloths
Cleaner Cloth Mailers
Memorandas
Folders
Window Cards
Counter Cards
Hi-Spot Displays
Fitting Table Pads
Tear Books
Newspaper Copy
Radio Talks
Letter Copy


SUBMITTED
Southeastern Opt. Co.
DATE
7/39
AS
MD
DISP MD
ORTH'PEDIC
S
RX
DISP
OD.
X
PLAQUE NUMBER
12015
P.C.
TCA
OFF
EXD
X
ADDRESS
205 Broad St.
TOT. LENS USAGE
EST'D. USAGE
STOCK
RX
PROS.
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX
YEAR
JAN
FEB
MAR
APR
MAY
JUNE
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OCT
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DEC
STATE
TOWN
ACCOUNT
GA.
ALBANY
A. M. REITER, O. D.

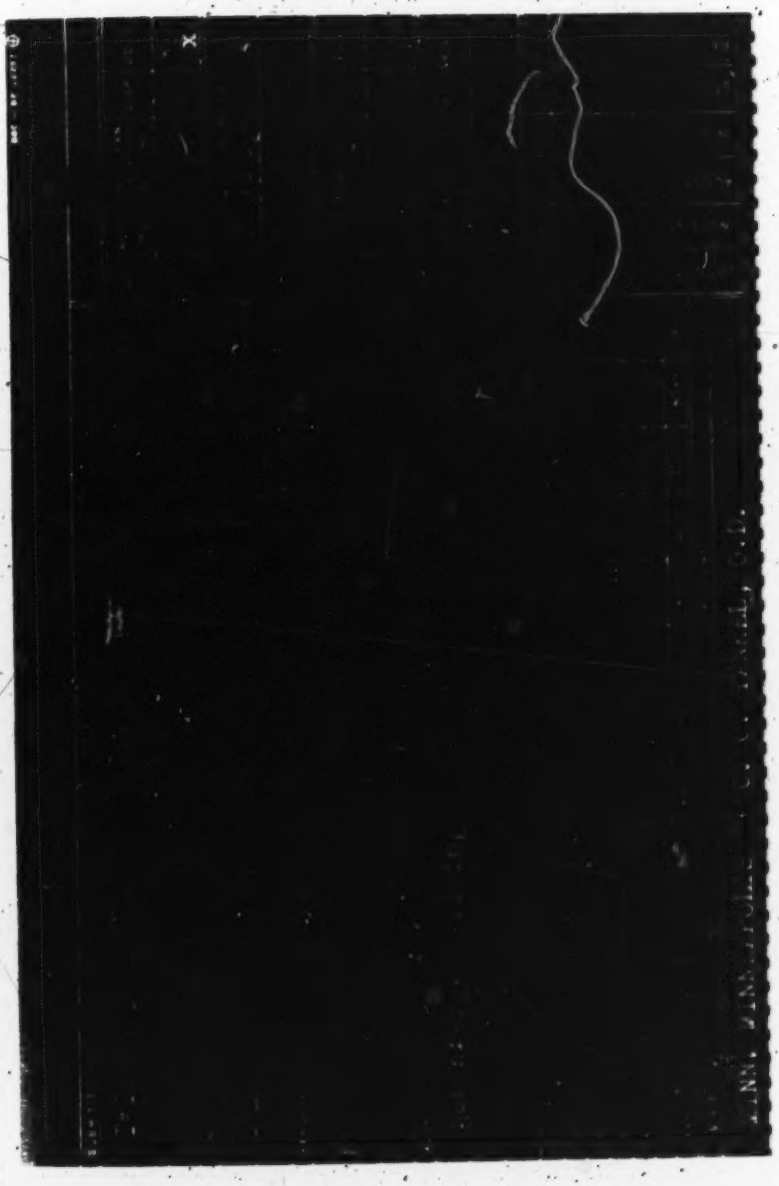


UNITED STATES VS. BAUSCH & LOMB OPTICAL CO. ET AL. 2996

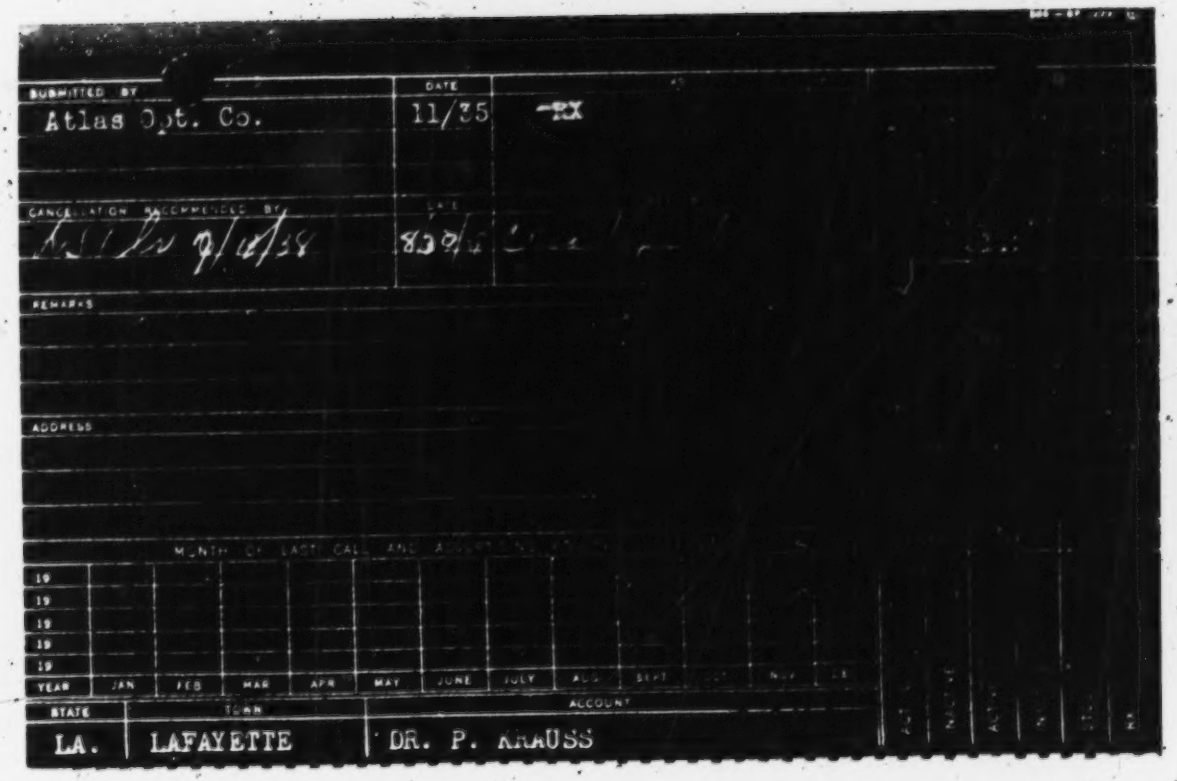

SUBMITTED BY
McIntl
DATE
6/35
CANCELLATION RECOMMENDED BY
DATE
REMARKS
ADDRESS
735 Sansom Street,
STATE
PA.
TOWN
PHILADELPHIA
ACCOUNT
A. L. LEVI
1901

SUBMITTED BY
E.W.Rey. _ds Co.
DATE
Rx
X
ADDRESS
110 N. Brand Blvd.
CALIF GLENDALE
C. V. MORLEY, O.D.

CAL. | LOS ANGELES | J. LEON HUSANO



Schiller Jig. Co.
Fl
1803 W. Fort Stre t,
MICH DETROIT
LEON H. KAY



SUBMITTED BY: Atlas Opt. Co.

DATE: 11/35 -RX

CANCELLATION RECOMMENDED BY: [illegible] 9/16/38

DATE: 8[illegible]

REMARKS

ADDRESS

MONTH OF LAST CALL AND ACCOUNTS

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT		NOV	
19												
19												
19												
19												
19												

STATE	TOWN	ACCOUNT
LA.	LAFAYETTE	DR. P. KRAUSS

1302 *Exhibit 89*

JAN. 24, 1939.

BAUSCH & LOMB OPTICAL CO.
PANOPTIK COMPANY, INC.
SOFT-LITE LENS CO., INC.

GENTLEMEN: Please remove the name of L. A. Slawny, O. D., Milwaukee, Wisconsin, from your license list.

Dr. Slawny is now working for the Boston Store in that city. The Optical Department in this store is conducted by Hollander of Chicago, who handles it on an unethical basis.

Yours very truly,

RIGGS OPTICAL COMPANY.
M. ONSGARD.

MO.

1303 *Exhibit 90*

RIGGS OPTICAL COMPANY
SAN FRANCISCO, CALIF.

3/8/39.

Mr. DEAN TRUEX,
Cory Hotel, Denver, Colorado.

DEAR DEN:—We heard from Paul Davies that you had discussed the J. H. Burgess proposition with him, and thought that the matter had been settled between you.

We recommend that you definitely discontinue his License. For your personal information, the Panoptik Company is cancelling his license as of Monday, March 6th, and B. & L. will cancel the Loxit License also. The Orthogon License was one which was granted by us as representatives of B. & L. and this also will be cancelled.

Therefore, we will all be in the clear as regards this man's activities.

Very truly yours,

RIGGS OPTICAL COMPANY,
NICK STEVENS.

NS¾B.
3/10/39—A. F. I.—Please cancel J. H. Burgess, Moscow, Idaho, as per above.

D. S. T.

1304 *Exhibit 90–A*

REMOVE FROM SOFT-LITE LICENSEE LISTS AT ONCE

MARCH 13, 1939.

RIGGS OPTICAL COMPANY,
Flood Building, San Francisco, Calif.

Letter to D. S. T. 3/8/39.

J. H. Burgess, O. D., Moscow, Idaho. A Stock Licensee.

This account is no longer entitled to Soft-Lite Licensee privileges.

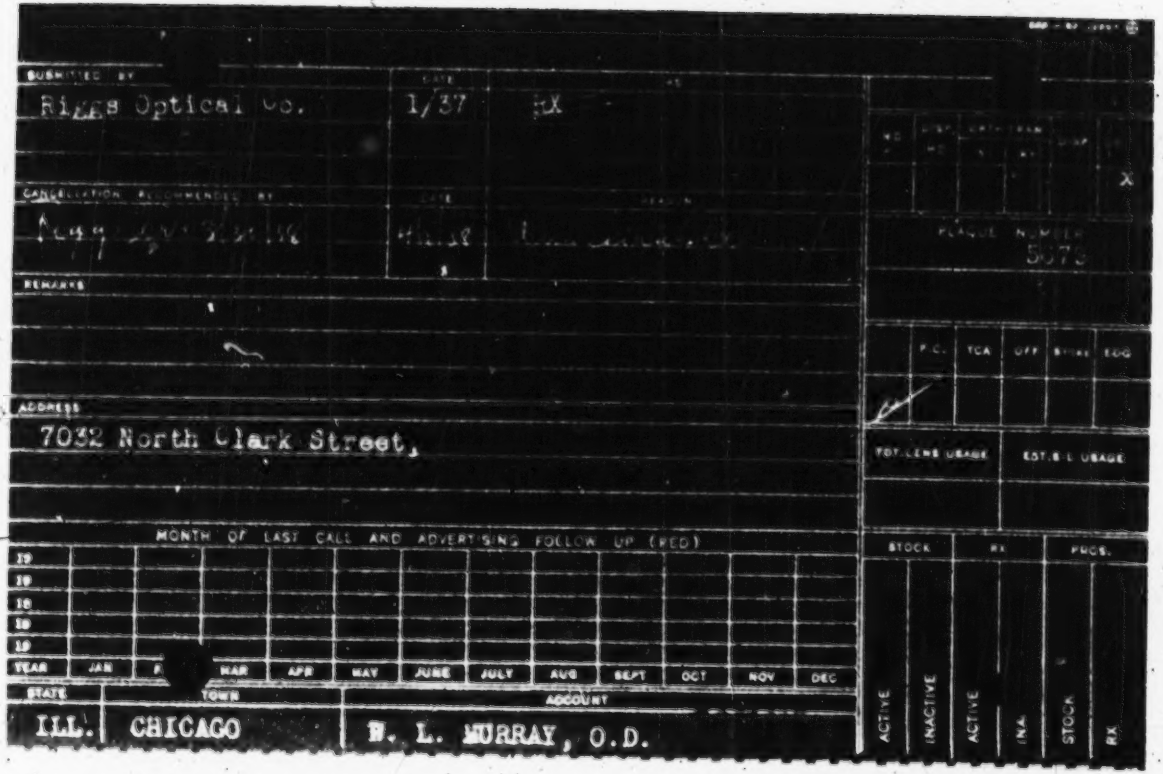
SOFT-LITE LENS CO., INC.
R. G. LANDIS,
Vice President.

D. S. T.
J. D. W.
Western Optical Company.

	Date	By
Notice Received		
Removed from List		
Interoffice Notification		
This Notice Filed		

1305–1336

2443 Ainslee Street,
PLAQUE NUMBER
2736
ILL. CHICAGO
R. W. MILLER, O.D.
ACTIVE
INACTIVE
STOCK



SUBMITTED BY: Riggs Optical Co. DATE: 1/37 RX

CANCELLATION RECOMMENDED BY: DATE: REASON:

REMARKS

ADDRESS: 7032 North Clark Street,

PLATE NUMBER: 5075

P.C. | TCA | OFF | BRKG | EDG

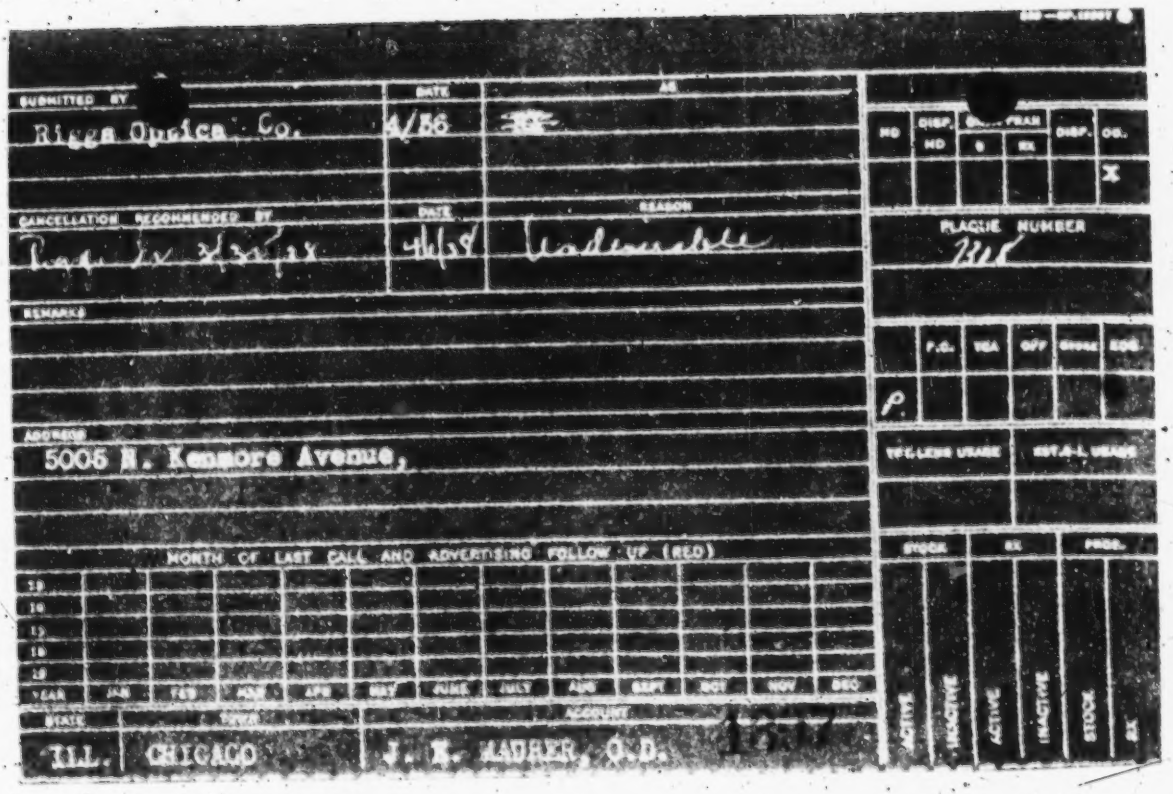
POT. LENS USAGE | EST. B. L. USAGE

MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)

YEAR	JAN	F	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19												
19												
19												
19												
19												

STOCK: ACTIVE, INACTIVE | RX: ACTIVE, INA. | PROS.: STOCK, RX

STATE: ILL. | TOWN: CHICAGO | ACCOUNT: W. L. MURRAY, O.D.



SUBMITTED BY [redacted]

Riggs Optical Co. — DATE 4/56 — AS [redacted]

CANCELLATION RECOMMENDED BY — DATE 4/15/58 — REASON Undesirable

REMARKS

ADDRESS 5005 N. Kenmore Avenue,

MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
59												
58												
57												
56												
55												

STATE ILL. — TOWN CHICAGO — ACCOUNT J. K. MADDER, O.D. — 1517

NO	DISP. NO	SPECIMEN		DISP.	OC.
		S	EX		X

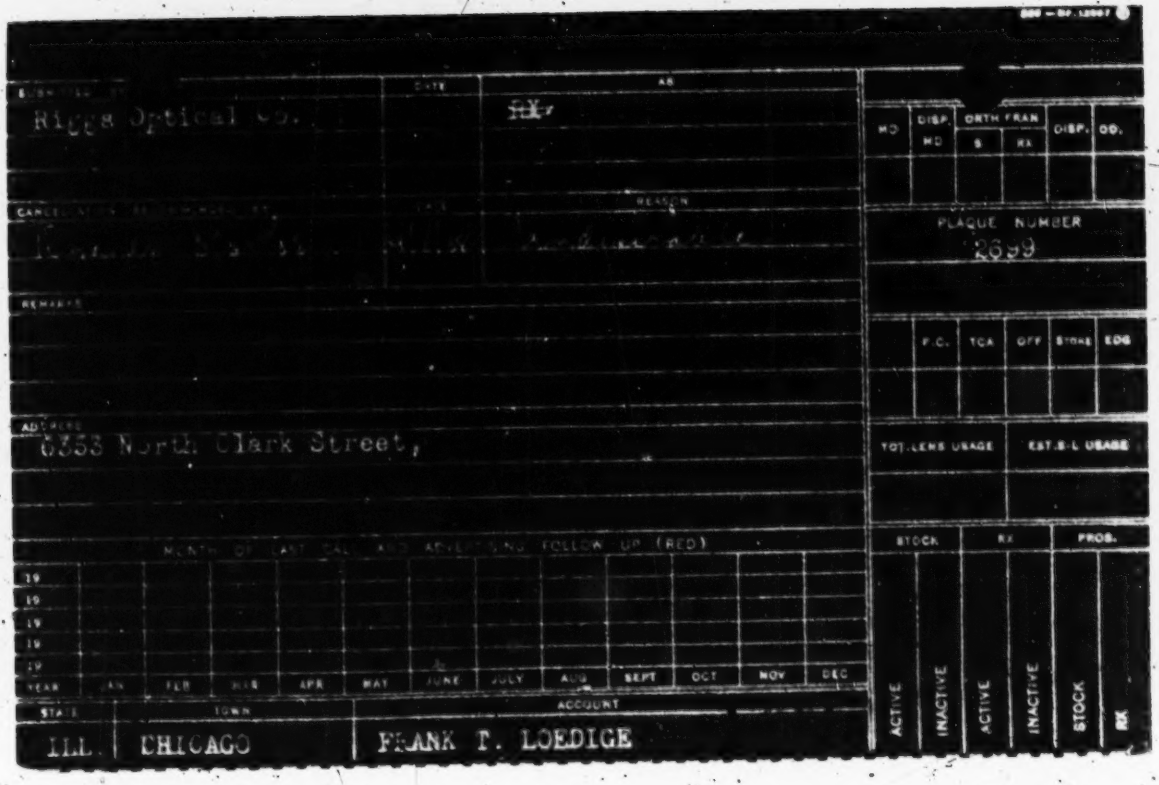
PLAQUE NUMBER B18

	P.C.	VEA	O/T	Gonio	EOM
P.					

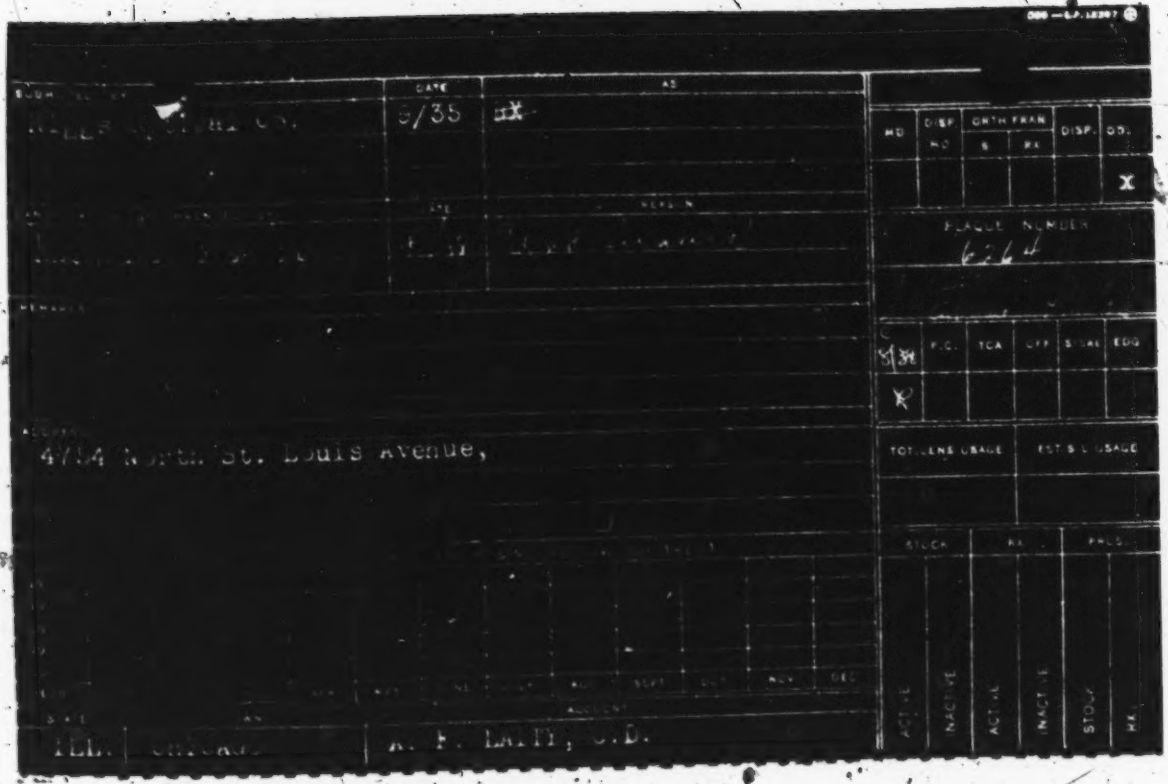
TELELENS USAGE — REF. A-L VISUAL

STOCK		EX		PROS.	
ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	EX

5355
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX
Dr. CARL HAGGIO
CHICAGO
ILL.


Riggs Optical Co.
6333 North Clark Street,
PLAQUE NUMBER
2899
ILL.
CHICAGO
FRANK T. LOEDIGE

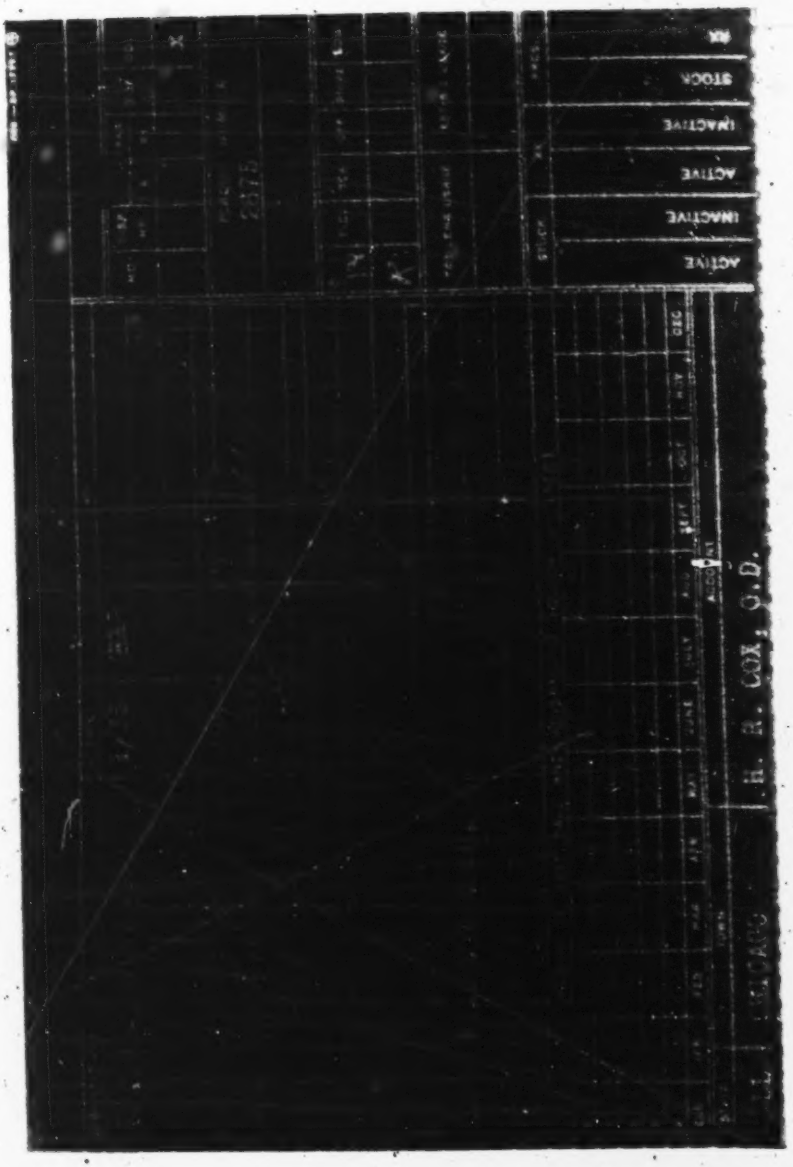
5411 West North Avenue,
CHICAGO
W. F. LEHMANN, O.D.
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX



UNITED STATES VS. BAUSCH & LOMB OPTICAL CO. ET AL. 3024

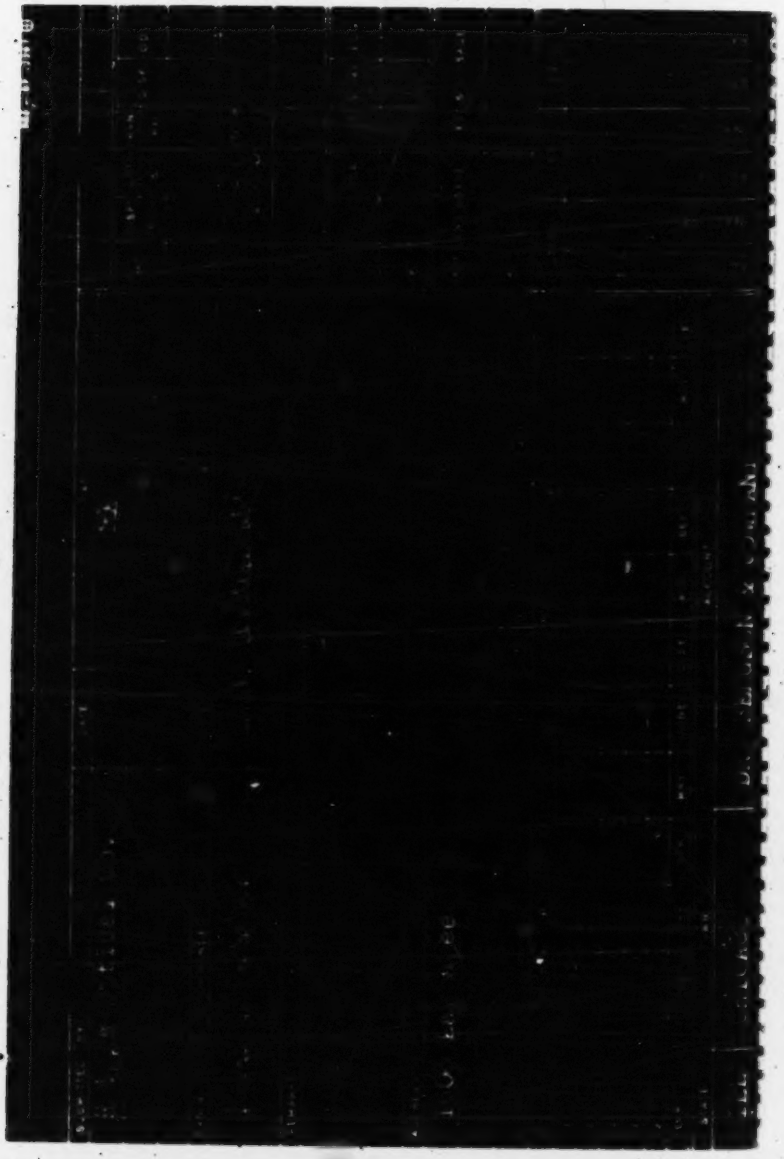
2414
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX
U. S. DEPOT, O. D.




ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX
H. R. COX, Q.D.



DATE
5/20
STATE
IL.
CHICAGO
R. L. BEANS, O.D.

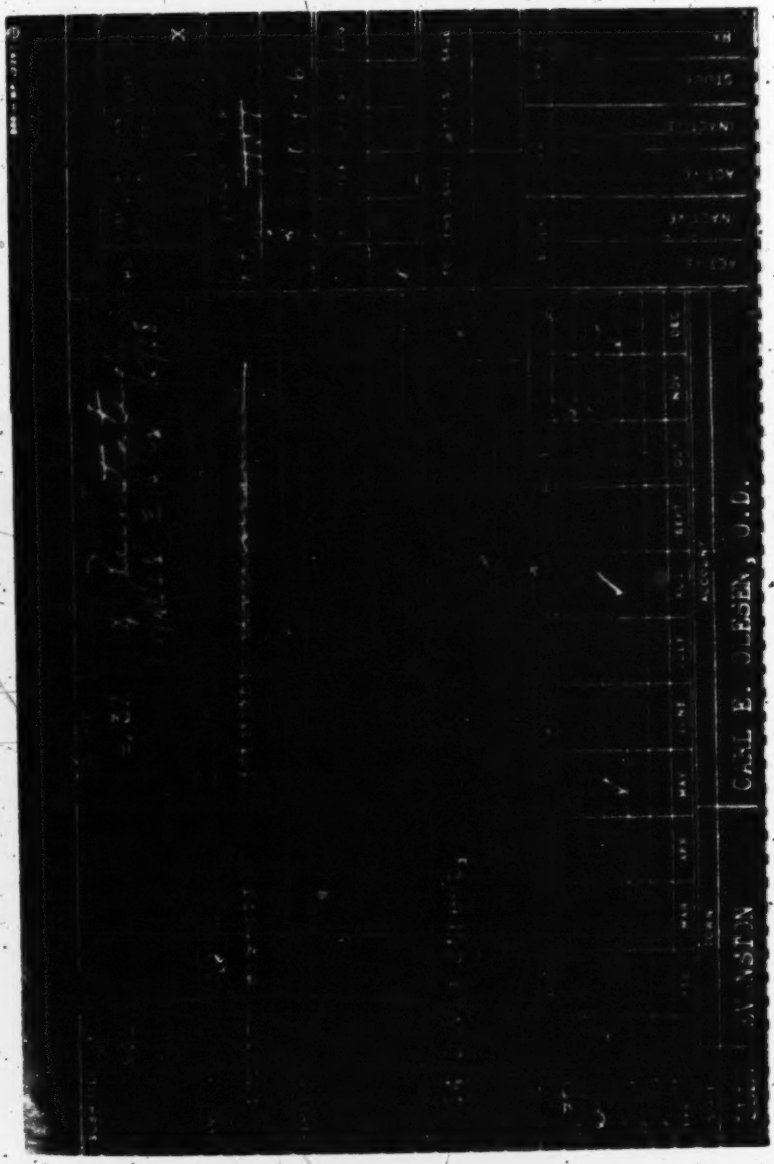


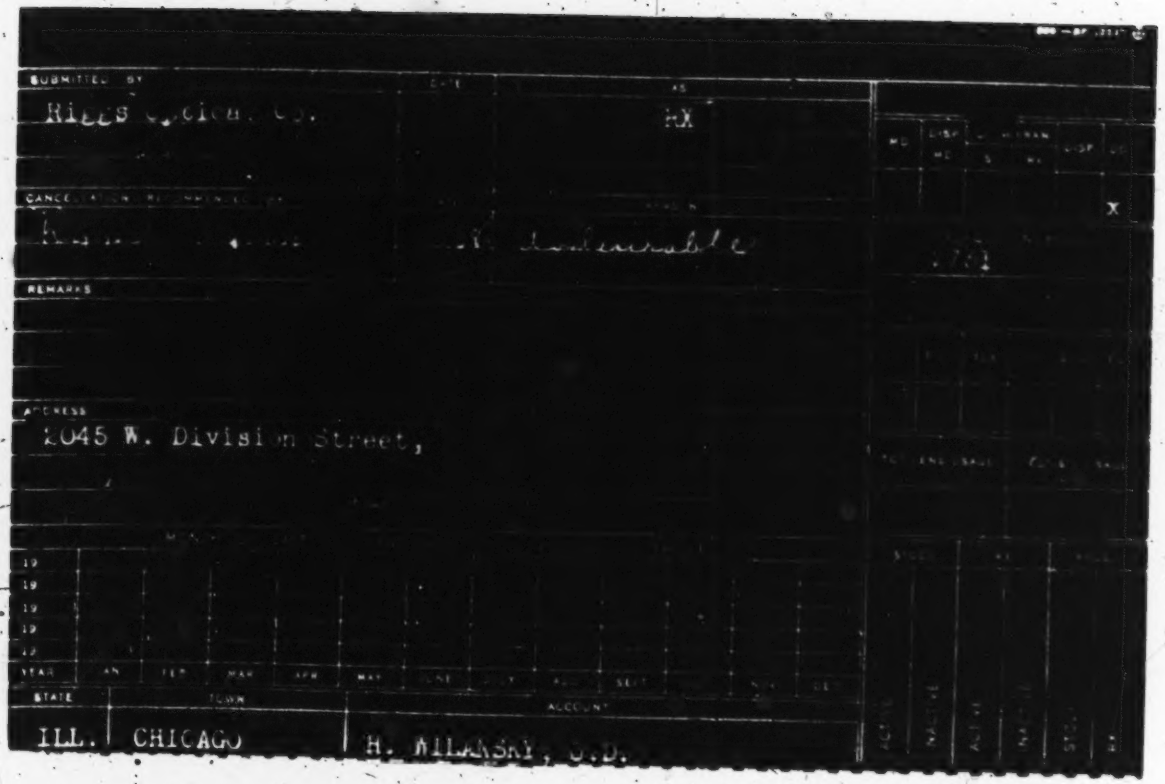
Schroeder-Miller & Eis
5 N. Wabash Ave.

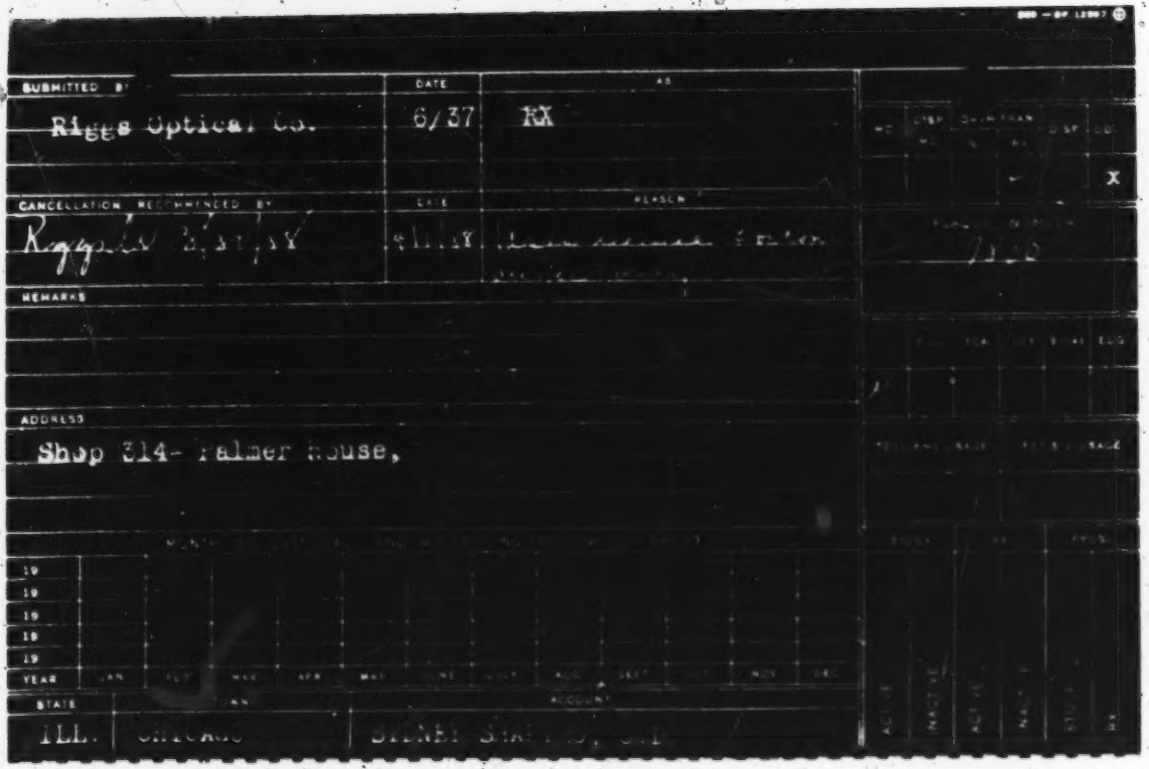
Riggs Opt. Co.
ETS lr. 6/22 cl rpt 5/26/33
11902
V. A. GREENE

PLAQUE NUMBER
4662
DISP
OD
X
ACTIVE
INACTIVE
STOCK
RX

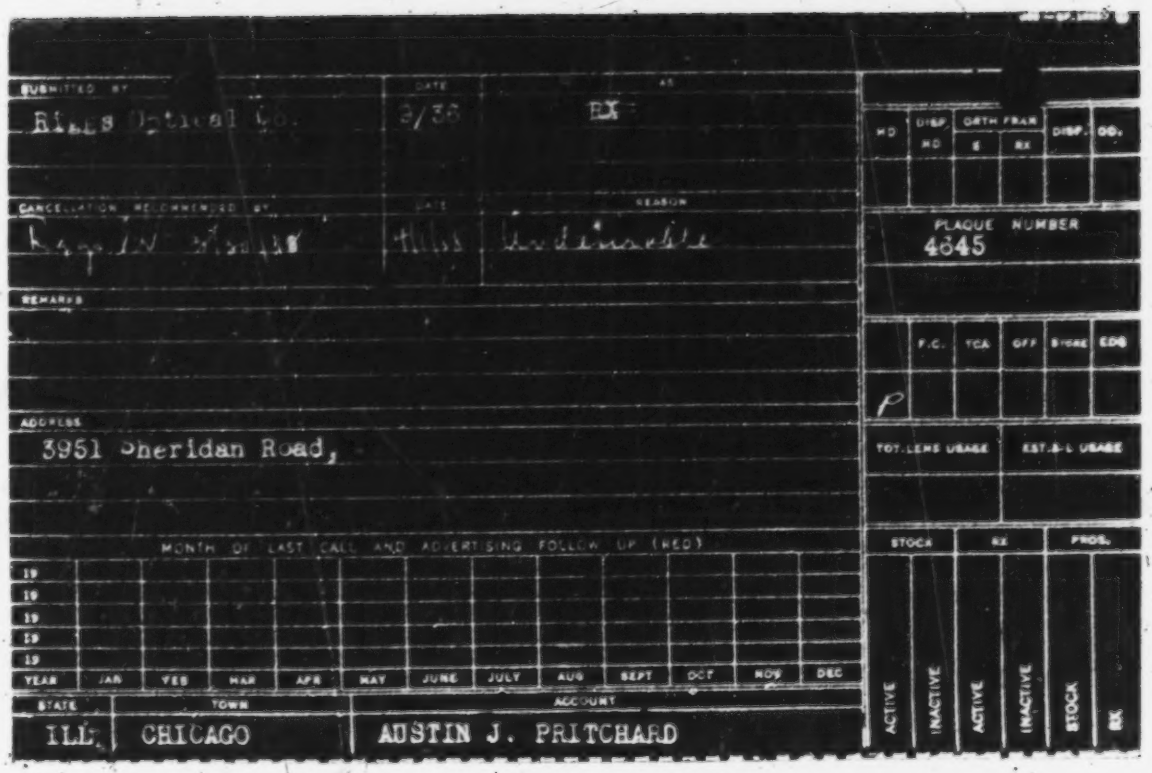
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX
C. D. CRAFFORD, C.D.
Ill. Chicago


Cecil E. Ollesen, O.D.


SUBMITTED BY
Riess Optical Co.
AS
RX
CANCELLATION
Non-Adjustable
X
REMARKS
ADDRESS
2045 W. Division Street,
YEAR
STATE
TOWN
ACCOUNT
ILL.
CHICAGO
H. MIYAKAWA, O.D.

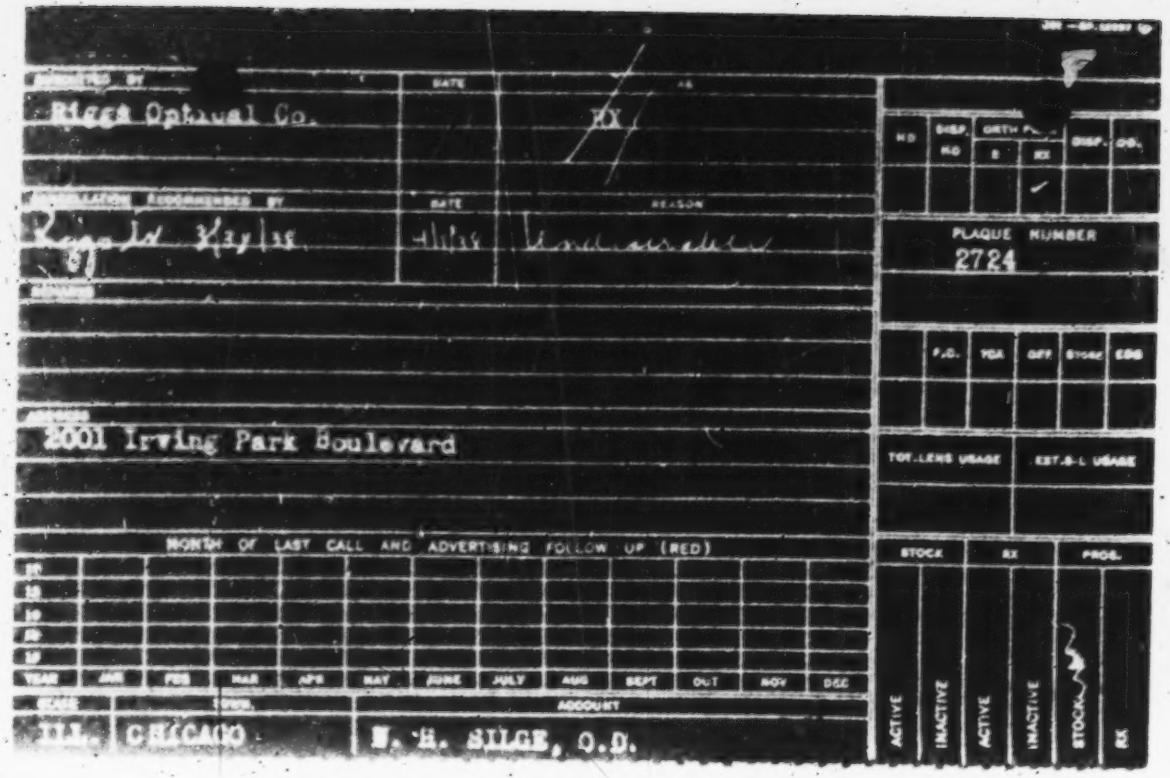


SUBMITTED BY: Riggs Optical Co.
DATE: 6/37
AS: RX
CANCELLATION RECOMMENDED BY:
DATE:
REASON:
REMARKS:
ADDRESS: Shop 314- Palmer House,
YEAR
STATE: ILL. Chicago
ACCOUNT



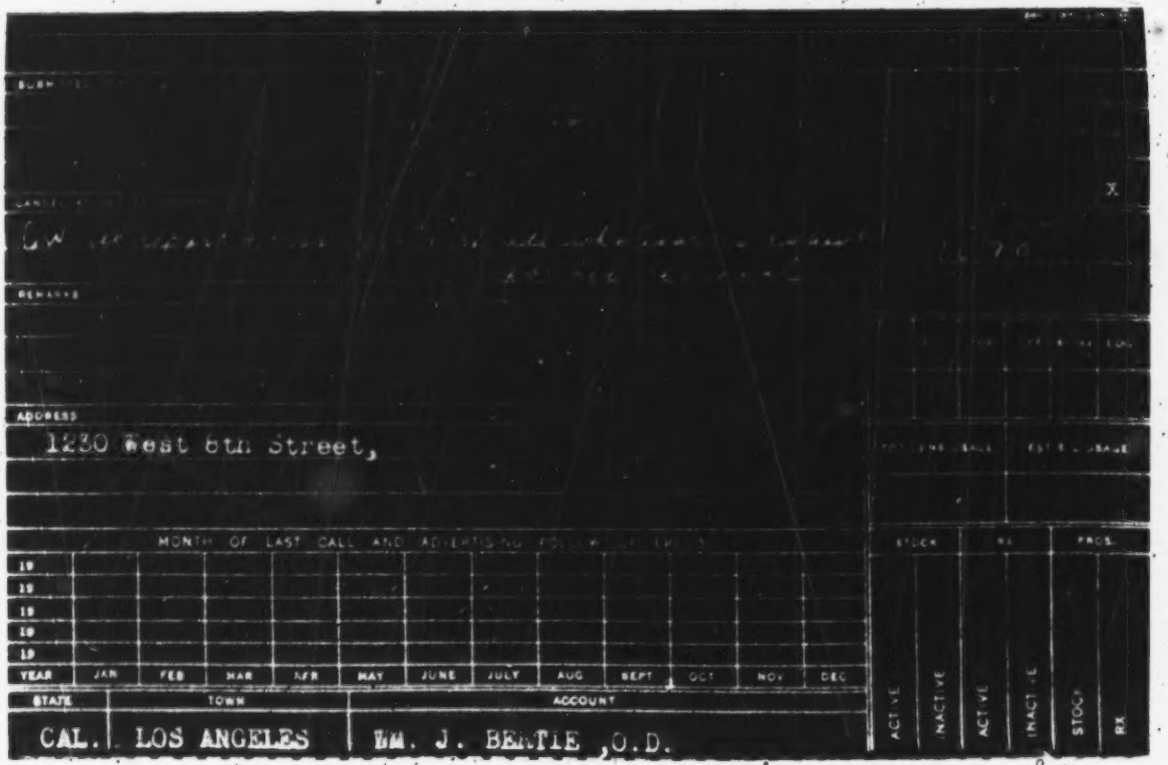
SUBMITTED BY: Bliss Optical Co.
DATE: 9/38
AS: Rx
CANCELLATION RECOMMENDED BY: [illegible]
DATE: [illegible]
REASON: Undesirable
REMARKS:
ADDRESS: 3951 Sheridan Road,
MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)
19
19
19
19
19
YEAR | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC
STATE: ILL. | TOWN: CHICAGO | ACCOUNT: AUSTIN J. PRITCHARD
MD | DISP. MD | OPTH FRAM E | OPTH FRAM RX | DISP. | OD.
PLAQUE NUMBER 4845
P | F.C. | TCA | OFF | B-CASE | EDG
TOT. LENS USAGE | EST. A-L USAGE
STOCK | RX | PROS.
ACTIVE | INACTIVE | ACTIVE | INACTIVE | STOCK | RX

UNITED STATES BAUSCH & LOMB OPTICAL CO. ET AL. NO 2W


Riggs Optical Co.
DATE
AS
Rx
RECOMMENDED BY
DATE
REASON
Reginald Hayes
4/1/58
Lens ordered
2001 Irving Park Boulevard
MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)
YEAR
JAN
FEB
MAR
APR
MAY
JUNE
JULY
AUG
SEPT
OCT
NOV
DEC
CHICAGO
W. H. SILGE, O.D.
RX
PLAQUE NUMBER
2724
STOCK
RX
PROG.
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX

1606 Milwaukee Avenue,
ILL. CHICAGO
A. [illegible], O.D.
4728
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
IX

Rx
Stock
12134
6504 Hollywood Blvd.



ADDRESS

1230 West 6th Street,

MONTH OF LAST CALL AND ADVERTISING FOLLOWING THIS

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19												
19												
19												
19												
19												

STATE	TOWN	ACCOUNT
CAL.	LOS ANGELES	WM. J. BEATIE, O.D.

STOCK		RX		PROS.	
ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	RX


CAL.
LOS ANGELES





E. G. Abbe, O. C.

PLAQUE NUMBER
7262
LA.
NEW ORLEANS
ST. SAMUEL A. LABLEUX
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX

1337 *Exhibit 97*

MARCH 25, 1936.

To Soft-Lite Licensees:

NEW PRICE STRUCTURE

GENTLEMEN: We believe that you, along with Soft-Lite Stock Licensees generally, have valued the stability of our unchanging price and sales policy under which you have been purchasing Soft-Lite Lenses these many years. It is fortunate that even throughout the recent business depression no change was made that would affect Soft-Lite prices or policy. Of equal importance was the strict adherence to a single quality, standard—and that the highest.

The high plane on which Soft-Lite Lenses have been sold, the ethical channels to which their sale has been limited, and of course the intrinsic merit of the lens undoubtedly accounts for the fact that in 1935 more Soft-Lite Lenses were sold than in any previous year.

We have been giving consideration recently to a few minor adjustments in the Soft-Lite price structure aimed towards modernization and greater advantage to Soft-Lite Licensees. As a result, we are issuing new Prescription and Stock Price Lists, effective as of April 1st. A set of these is attached hereto. These prices supersede all earlier lists, including the single vision price list of August 1, 1931, and the bifocal Prescription Price List of February 1935. Soft-Lite Lenses are to be sold regularly to all Soft-Lite Licensee classifications only, and at the prices and terms as shown therein.

The introduction of the edged column, the reduction in prices on Spheres below Cylinders, and the slight revision in foci divisions are the principal changes in these new price lists.

The new Stock Price List which applies exclusively to Soft-Lite Stock Licensees contains a number of advantages to you. Its structure has been harmonized with modern procedure as regards focus divisions and the lower prices on Spheres compared with Cylinders. The reduction in the net cost on Soft-Lite Orthogon Lenses especially should result in an increased usage of the corrected series in Soft-Lite.

1338 Prices in the second column (single pair) represent a 20% reduction from the first column (nonstock list) as shown in the Stock Price List. The net prices in the second

column are identical to the prices that would result by applying 33⅓% discount to the new Soft-Lite uncut prescription prices. By purchasing Soft-Lite uncut lenses in nominal quantities, as is the practice in buying on a stock basis, you may now enjoy a saving of 10%. This affords you a reduction in cost that should justify your carrying a more complete Soft-Lite Lens stock. The carrying of an adequate stock should enable you to render a better and a more economical service to your patients.

The net prices were arrived at by applying the discounts to the first column prices, and as described in the explanatory page. You will undoubtedly find the listing of prices on a net basis a convenience.

As a Soft-Lite Stock Licensee, you have the opportunity, as you know, of purchasing your requirements of Soft-Lite Orthogon uncut lenses at the listed net prices applying to them. This privilege, of course, applies to Orthogon lenses in Soft-Lite only, even though you may not be an Orthogon Franchise Dealer.

With the new Business-Building Program that will be introduced April 1st, an opportunity to increase your Soft-Lite usage is offered on most conservative and profitable lines. Accept our earnest appreciation for your patronage and allow us to bespeak its continuance.

With best wishes,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.,

———— ————, *Vice President.*

RGLANDIS:ICE.

Encl.

1339 *Exhibit 98*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows, Soft-Lites Soften the Light

119 West 57th Street

NEW YORK CITY

MAY 14, 1936.

To Soft-Lite Wholesalers:

The following is a complete price set-up on the improved Soft-Lite Sport-Lite and the new Soft-Lite Overglas which were announced to you in our letter of May 7, 1936:

SOFT-LITE SPORT-LITE

Suggested minimum retail prices	To retailers	To class "A" wholesalers	To distributors
Complete outfit:			
$7.50 (East Rockies)	$4.50 (1)	$3.35	$3.00
$9.00 (West Rockies)	$4.25 (5)		
	$4.00 (10)		
	$3.75 (20)		
Frame and case only	$2.75	$2.00	$1.75

SOFT-LITE OVERGLAS

Complete outfit:			
$7.00 (East Rockies)	$4.00 (1)	$2.85	$2.50
$8.00 (West Rockies)	$3.75 (5)		
	$3.50 (10)		
	$3.25 (20)		

All prices listed above are net.

SOFT-LITE LENS COMPANY, INC.

1340 *Exhibit 99*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows, Soft-Lite Softens the Light

119 West 57th Street

NEW YORK CITY

MAY 14, 1936.

To Soft-Lite Class "A" Wholesalers:

The following is a complete price set-up on the improved Soft-Lite Sport-Lite and the new Soft-Lite Overglas which were announced to you in our letter of May 7, 1936:

SOFT-LITE SPORT-LITE

Suggested minimum retail prices	To retailers	To class "A" wholesalers
Complete outfit:		
$7.50 (East Rockies)	$4.50 (1)	$3.35
$9.00 (West Rockies)	$4.25 (5)	
	$4.00 (10)	
	$3.75 (20)	
Frame and case only	$2.75	$2.00

SOFT-LITE OVERGLAS

Complete outfit:		
$7.00 (East Rockies)	$4.00 (1)	$2.85
$8.00 (West Rockies)	$3.75 (5)	
	$3.50 (10)	
	$3.25 (20)	

All prices listed above are net.

SOFT-LITE LENS COMPANY, INC.

1341 *Exhibit 100*

SOFT-LITE LENS COMPANY, INCORPORATED

[Copy]

FEBRUARY 25, 1939.

Branch Managers—Soft-Lite Wholesalers:

Two temporary advance copies of the new Soft-Lite stock price list are attached. One is for your personal use, one for billing. Changes in quantity requirements, column, headings, etc., should be carefully noted.

Purchases of Soft-Lite lenses and blanks made on a stock basis, on and after February 27, 1939, are to be billed from this price list.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: sr.

1342 *Exhibit 101*

SOFT-LITE LENS CO., INC.
Soft-Lite Lenses Greater Comfort—Better Appearance
Squibb Building, 745 Fifth Avenue.
NEW YORK CITY

FEBRUARY 25, 1939.

An advance copy of the new Soft-Lite Stock price list is enclosed. A copy was mailed today to all Soft-Lite Stock Licensees and Orthogon Franchise Dealers and to every Soft-Lite Distributor and Class "A" Wholesaler's branch office. We also enclose copies of the notifications to Soft-Lite Licensees and to Soft-Lite Wholesalers' branch offices that accompanied the new price list.

No changes have been made in the first-three columns contained in the present Stock price list (of April 1, 1936) but, we have added two additional columns covering purchases of 25 pairs and 50 pairs, assorted. These new columns apply both to uncut and semi-finished single vision lenses. This has been done in order to place Soft-Lite wholesalers in position to do more Soft-Lite stock business.

We have introduced an additional column for the pricing of Soft-Lite bifocal blanks which should result in a more general use of Soft-Lite bifocals on the part of larger retailers equipped

with surface shops and thereby produce Soft-Lite bifocal blank business for the wholesaler where very little of this business existed heretofore.

We feel that we are, in this way, offering the Soft-Lite Wholesaler, the opportunity to solicit Soft-Lite stock orders on a substantial basis.

We have mailed these advance price lists so that no time would be lost in placing you in position to go after Soft-Lite stock business on this more advantageous basis. We urge you, therefore, to make immediate distribution to your salesmen of the price lists sent to you today under separate cover for this purpose.

Printed price lists will be distributed as soon as they are available. This delay provides the added advantage of making it possible to make any revisions that experience may indicate desirable, particularly if these new columns do not produce the volume of uncut lens sales which you and we should reasonably expect.

1343 SOFT-LITE LENS COMPANY, INCORPORATED

We realize that under this new stock price list, there will be little or no profit to you on stock sales, especially those made under the new 25 and 50 pair columns. Accordingly, we plan to contact you as soon as possible for the purpose of discussing mutually satisfactory arrangements under which your firm may qualify as a Distributor. Obviously it would be decidedly unprofitable for you to continue to purchase Soft-Lite Lenses on the present basis if any appreciable percentage of your Soft-Lite sales will be made to Stock Licensees under the new price list.

We will make all billings on and after February 27th retroactive on the Distributor basis to all present Class "A" Wholesalers who qualify in the near future as Distributors. If, therefore, you expect to qualify as a Distributor, we would suggest that you go right ahead and take advantage of the opportunities for greater sales of Soft-Lite uncut lenses made possible by this new price list.

We shall arrange to discuss the matter with you at the earliest opportunity.

With kind regards,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: sr.

1344 *Exhibit 102*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort — Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

FEBRUARY 25, 1939.

An advance copy of the new Soft-Lite Stock price list is enclosed. A copy was mailed today to all Soft-Lite Stock Licensees and Orthogon Franchise Dealers and to every Soft-Lite Distributor and Class "A" Wholesaler's branch office. We also enclose copies of the notifications to Soft-Lite Licensees and to Soft-Lite Wholesalers' branch offices that accompanied the new price list.

No changes have been made in the first three columns contained in the present Stock price list (of April 1, 1936) but, we have added two additional columns covering purchases of 25 pairs and 50 pairs, assorted. These new columns apply both to uncut and semi-finished single vision lenses. This has been done in order to place Soft-Lite wholesalers in position to do more Soft-Lite stock business.

We have introduced an additional column for the pricing of Soft-Lite bifocal blanks which should result in a more general use of Soft-Lite bifocals on the part of larger retailers equipped with surface shops and thereby produce Soft-Lite bifocal blank business for the wholesaler where very little of this business existed heretofore.

We feel that we are, in this way, offering the Soft-Lite Wholesaler, the opportunity to solicit Soft-Lite stock orders on a substantial basis.

We have mailed these advance price lists so that no time would be lost in placing you in position to go after Soft-Lite stock business on this more advantageous basis. We urge you, therefore, to make immediate distribution to your salesmen of the price lists sent to you today under separate cover for this purpose.

Printed price lists will be distributed as soon as they are available. This delay provides the added advantage of making it possible to make any revisions that experience may indicate desirable, particularly if these new columns do not produce the volume of uncut lens sales which you and we should reasonably expect.

1345 Reductions in costs to Soft-Lite Wholesalers have, of course, also been made. However, in order that the value of your Soft-Lite inventory will not be affected, these reductions will be made in the form of an increase in the quarterly bonus. Effective on all purchases made on and after February 27th, the quarterly bonus will be based on 25¢ per pair on all uncut lenses from the prices now listed in the Distributors' price list of April 1, 1936. The 5¢ per pair previously paid on single vision semi-finished lenses is eliminated. We hope, of course, that you will find it profitable to use a portion of these bonus checks for sales promotion activity in behalf of Soft-Lite Lenses.

Both our company and the Bausch & Lomb Optical Company have cooperated substantially in the expectation that these price adjustments will materially increase your total sales through substantially increased stock business.

On the attached sheet we have analyzed the approximate effect of this new set up on your margin of profit on Soft-Lite sales. A study of this analysis will indicate that your average annual gross profit should be even more substantial than ever.

With kind regards,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

RGLandis:lck.
encl.

1346 *Exhibit 103*

BAUSCH & LOMB OPTICAL CO.

Established 1853

ROCHESTER, NEW YORK

MARCH 24, 1939.

Mr. NATHANIEL SINGER,
Soft-Lite Lens Company,
745 Fifth Avenue, New York City.

DEAR NAT: Ben Ramaker has referred to me the whole matter of plano Soft-Lite lenses which you have included in your Soft-Lite stock lens setup.

Ray wrote us that you have figured your buying prices on these lenses by deducting the 25¢ per pair extra for Crookes from the ten pair prices listed for Crookes plano on page 7 of our Stock Lens Price List, and then adding 10¢ per pair as the Soft-Lite extra, and applying a 40% discount.

This is, of course, new business with us. We will figure the net prices to Soft-Lite by this regular formula with the understanding that we will supply these to you at these prices when the lenses are ordered in manufacturing quantities—that is, twenty or twenty-five pairs of a size and shade at a time.

Ray suggested that your resale price to wholesalers would be the list prices arrived at by the above formula—that is, 15¢ per pair less than our ten pair net column price for Crookes plano; and you suggested that the resale price by the wholesalers should be the same as our Kalichrome net column prices.

I have a suggestion that I believe is more logical, and one that gives Soft-Lite a better break. Instead of establishing your Soft-Lite to wholesale prices on the basis of the Crookes list, why not establish these prices on the basis of the Kalichrome list—that is with a maximum discount to your distributors of 40% from the Kalichrome prices. Soft-Lite will then make 60¢ per pair regardless of size and distributors will make the same percentage of gross profit on their Soft-Lite sales regardless of size.

As I explained to you in Boston, the scheme that you originally had runs the wholesalers into a loss in the largest sizes and fifty pair quantities.

1347 Now to be entirely consistent, Nat, you should use the first two net columns in the Kalichrome list for the first two net columns for plano meniscus Soft-Lite; but you should figure the twenty-five and fifty pair column prices by the Soft-Lite formula which calls for 11% and 20%, or 12½% and 25%—however, you work out your net column prices for Soft-Lite products generally—instead of computing our Kalichrome prices in which the list two columns are figured on the basis of 16⅔% and 33⅓%.

This will give you the opportunity to establish your distributor prices, your jobber prices, your bonus allowance, etc.; and at the same time you will have a pricing structure that is consistent for the wholesaler, and profitable to Soft-Lite.

I am sure that you will understand, Nat, that in offering suggestions regarding your resale policy, I am only expressing an opinion, which may not be worth a great deal. After you have looked over the attached schedules you will be able to tell.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.
SCOTT.

SSterling: MC.

Exhibit 103–A

SOFT-LITE PLANO MENISCUS

	Lens size	Crookes, 10 pr. net	Crookes, 10 pr. price, less 25% plus 10¢	Same, less 40%—factory to B. L.	Soft-Lite to distributor—Kali-chrome factory net	Soft-Lite gross profit	%	Wholesale to retail net column prices				Wholesale distributors' gross profit			
								2 pr. of a kind or 5 pr. asst.	10 pairs assorted	25 pairs assorted	50 pairs assorted	On 10 pairs, per pair	On 25 pairs, per pair	On 50 pairs, per pair	%
Your schedule	47–50	.90	.75	.45	1.05	(.60) .30	40	1.65	1.75	1.46	1.17	(.70) 1.00	(.41) .71	(.12) .42	30.
	57	1.45	1.30	.78	1.35	(.87) .52	40	2.50	2.30	1.92	1.53	(.96) 1.00	(.57) .62	(.18) .28	18.
	63	2.00	1.85	1.11	1.65	(.54) .74	40	3.10	2.85	2.37	1.90	(1.30) 1.00	(.72) .88	(.26) .05	3.
	71	2.50	2.35	1.41	1.90	(.49) .94	40	3.60	3.35	2.79	2.23	(1.45) 1.00	(.89) .44	(.33) .12	less 8%
	80	3.25	3.10	1.86	2.30	(.44) 1.24	40	4.35	4.10	3.42	2.73	(1.80) 1.00	(1.12) .32	(.43) .37	less 14%
					5			1	2	3	4				
Suggested	50	.90	.75	.45	1.05	.60	57	1.85	1.75	1.55	1.35	.70	.50	.20	28.
	57	1.45	1.30	.78	1.38	.60	46	2.50	2.30	2.05	1.80	.92	.67	.43	23.
	63	2.00	1.85	1.11	1.71	.60	32	3.10	2.85	2.50	2.15	1.14	.79	.44	20.
	71	2.50	2.35	1.41	2.01	.60	26	3.60	3.35	2.95	2.55	1.34	.94	.54	21.
	80	3.25	3.10	1.86	2.46	.60	19	4.35	4.10	3.65	3.20	1.94	1.19	.74	23.
					This price should be not higher than the Soft-Lite to Distributor Net, first column, sphere price of Balcor. If this is 75¢, let us say, then rearrange these prices as follows:										
					.75	.30	40							.60	45.
					1.28	.50	39							.82	28.
					1.71	.60	35							.44	20.
					2.06	.65	32							.69	19.
					2.56	.70	27							.64	20.

1349 *Exhibit 104*

[Copy]

MARCH 29TH, 1939.

MR. SCOTT STERLING,
Bausch & Lomb Optical Company,
Rochester, New York.

DEAR SCOTT: Just had a conference here on the matter of Soft-Lite Plano Meniscus prices and have studied in detail the suggested price list attached to your letter of March 24th. It looks to us as if that is as good a set-up as could be desired and, accordingly, we are going to put it into effect precisely as shown therein. Many thanks for this suggestion. We appreciate the regular formula being used in figuring our costs and are, of course, expecting to place the minimum manufacturing orders which in the case of Plano Meniscus are to be, as you say, 20 to 25 pairs of a size or shade.

In accordance with this, will you kindly place an order for us for all sizes in all shades with the exception of 51 mm., of which we now have a quantity in the different shades. We can use 25 pairs of each shade in the 57 mm. size but would prefer a lesser quantity of each shade in the larger sizes. We understand that you need 20 to 25 pairs for a minimum manufacturing order in order to cover a shell. It is perfectly agreeable to us to have you figure on that number of pairs for each size and shade but if the resultant quantity is less than 20 to 25 pairs of each size and shade, it will be perfectly satisfactory to us, since as I mentioned above, we do not think we will need that many pairs in each size and shade in the larger dimensions. Actually, we will be perfectly satisfied with about one dozen pairs of each size and shade above the 57 mm. On the other hand, we realize that you must have a quantity sufficient to cover a shell and for that purpose we are glad to have you put in enough glass to cover this requirement. You will notice that we have not mentioned any 47 mm. We have decided not to list these, even though they were shown on the temporary price list to the stock licensees. We would appreciate it, Scott, if you would advise us when we may expect delivery of this order, so that we may advise our distributors.

1350 Going back to prices, we will be sending out a complete list in temporary form to Distributors as of April 1st. Would appreciate your billing us at the new prices beginning at that time as well. We will also ask the distributors in announcing the early availability of the Plano Meniscus absorptive lenses in various sizes and shapes to let us have their requirements, so that we may be guided in placing additional manufacturing

orders at a later date. We shall, of course, be sending you a complete copy of this price list and announcement.

The 10¢ per pair that is to apply to uncut lenses we believe ought to apply to plano meniscus lenses as well, especially since the distributor's margin on the smaller size plano meniscus lenses on this new list is comparatively low. It just means that we will make 10¢ per pair less than that shown on the set-up which you sent down to us.

The distributor will be advised of the new set-up to him and to the licensee but rather than go the expense and trouble of issuing a new price for these lenses to stock licensees, we will instead include the change in the printed price list that we will be issuing to the retail licensee very soon. In the meanwhile the present prices in the 25 and 50 pair columns shown in the temporary price list will prevail, although they are lower than your suggested prices which we are adopting. Actually, it won't mean very much in the way of sales as very few of these lenses are purchased by retailers until April, May and June and the changes refer to the 25 and 50 pair columns only, anyway. We shall point out to the wholesaler that whereas the prices as now listed are a little lower than the new suggested prices which will give him a larger profit margin, still the sales will likely be so negligible before the new printed price list is sent out, that we do not think it will affect his margin to any great extent.

Sincerely yours,

NSinger: mc.
Copied: 9/4/41—RC.

1350–A *Exhibit 105*

TERRITORIAL COMMENT

Submitted by J. H. Vernon. At Philadelphia, Pa. Period End. 1/15.
For N. S. and RGL.

This two week period spent in Philadelphia, Baltimore and Washington.

On the subject of our National Advertising ran into one indication that some of our good Soft-Lite using optometrist are going to be upset when they read the ad in this week's Time and notice that we are using the term "eye authority" in place of mentioning "optometrist, oculist, etc." Dr. Roller of Kinsiman Optical Company, Washington (they use from 800 to 1,000 pairs Soft-Lite a

year) expressed his displeasure re this change very strenuously. Said he would take the matter up with the A. O. A. to get them to go on record against all manufacturers national advertising unless mentioned and used the word optometrist as a source of good examination & good products.

Dr. Roller tells me he intends in the near future to get out an elaborate publicity booklet (half tone cuts of his store and equipment) to send out to a 150,000 mailing list in Washington. He will very likely approach us for Soft-Lite cooperation in dollars so be on the lookout for a visit from him in a month or so.

Have tried out Elmers re-examination calendar idea in Washington. They all turn it down. Some say, good idea if it was presented to them last October or November. Too late now. Some question its dignity coming from Soft-Lite. Some question its effectiveness to create business.

The disturbing situation as it existed in Washington, re the Mayflower Optical Company I am pleased to say it is now entirely cleared up.

The removal of the Mayflower Optical Company from our stock list (assuming that my strong recommendation that they be immediately reinstated be favorably acted upon) has worked to the desired end that they (Mayflower) will now do all they can to further the acceptance and prestige of Soft-Lites in minds of the Washington oculists. Their business is increasing very rapidly and from now on they must be rated as real factors in the Washington dispenser group.

J. H. V.

Received: 1/17/38.
Copied: BP—1/17/38.
A True Copy From Files of Soft-Lite Lens Company.

G. DEWEY.

BP: 4/2.

A-93

1351 *Exhibit 106*

Soft-Lite Balcor Minimum	$9.00
Soft-Lite Ortho Minimum	10.00
Duosites Minimum	15.00
Soft-Lite D Minimum	19.00
Soft-Lite Panoptik Minimum	20.00
Uutex Torie Soft-Lite Minimum	18.00
Ultex Orth. Soft-Lite Minimum	19.00

Distributor to keep record of all S-L sales to Stocks & B Licensees.

O. K. to sell A. O. Co. if they tell name of Licensee on B basis.
No Sales to Credit Jewelers who give dishes, etc., as prizes.
No Sales to Price Adv.
No Sales to Montgomery Ward, Sear, Goinsberg.
Dist. understand Pref.—active—inactive.
Soft-Lite not eligible to Industrial Contract work.
No Discounts to Religious Assoc.
Professional Disc. O. K.
No Dispensing Discounts to Patients.

1352 *Exhibit 107*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort, Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

JUNE 19, 1941.

Mr. C. L. SMITH,
Gulf Optical Company,
616 Fannin Street, Houston, Texas.

DEAR CARROLL: Your letter of June 6th has come to my attention upon my return to the office today. The information which you give us certainly would seem to indicate that you have, by now, pretty well established your business and that you are enjoying a quite substantial volume of sales. Therefore, we feel that we can give more definite consideration to your application to become a Soft-Lite Distributor and upon the receipt of the necessary information we shall certainly be very glad to do so.

We will need to have a financial statement and advice as to the territory which you cover and the approximate annual sales of Soft-Lite lenses which you think you will be able to produce, and whether you will be in a position to consider the initial investment of approximately $2,000.

What we are interested in, of course, is the additional distribution which you may be able to give us in the territory which your firm covers. In fairness to existing wholesale distribution we have always taken the position of not wanting to add additional distributors to our list when this would simply result in splitting up approximately the same sales volume through more

wholesale outlets, but have favorably considered the applications from those firms who, apparently, would be able to increase the sale of our product. This, it seemed to us, was the only fair way to treat present customers and I am sure that you will agree that this has been a sound policy.

If you care to give us this information we shall be very glad to give the whole matter careful consideration.

Kind regards.

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.
RAY.

RGLandis: TK.

1353 *Exhibit 108*

JULY 18, 1941.

SOFT-LITE LENS CO.,
New York, N. Y.
Mr. RAY LANDIS.

DEAR RAY: In your previous letter you mentioned you would look upon our Soft-Lite application favorably, but you want a financial statement as of June 30th.

Below I give you this, and needless to say, this is confidential information.

LIABILITIES		ASSETS		
Capitol Stock	17,000.00	Accts Receivable & Cash in bank		32,909.30
Bank Loan	3,300.00	Inventory		10,912.30
Machinery notes	3,897.68	Machinery F&F	21,548.65	
Accounts payable	19,618.80	Less Depreciation reserve	5,286.57	16,261.08
Mason	3,000.00			
Surplus & Undivided Profit	13,257.21			
	60,073.69			60,073.69

Total Sales, 6 months 1941, 103,981.45.
By individual office thusly:

Houston	68,131.04
San Antonio	21,890.27
Lake Charles	13,960.16
	103,981.45

Believe this is information you want, and we await your reply, and sincerely hope it will be favorable,

Very Truly Yours.

C. L. SMITH,
Gulf Optical Co.

1354 *Exhibit 109*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort, Better Appearance

Squibb Building, 745 Fifth Avenue
NEW YORK CITY

JULY 21, 1941

Mr. C. L. SMITH,
Gulf Optical Company,
616 Fannin Street, Houston, Texas.

DEAR CARROLL: We have been expecting to receive the additional information referred to in your letter of June 26th which you advised us we would be receiving about July 15th. It has, however, not as yet been received.

I am leaving tonight on a three week midwest sales trip and shortly after my return, will go on vacation. However, I would not want to consider this information away from the office but would prefer it here in New York. It would, therefore, have attention after my return to the office which, as you see, will be the latter part of August.

It is very likely that we shall have to make some new arrangements in regard to the coverage of the southwest territory by a representative of our Company and to do so, it seems likely that I shall have to make a trip down that way for the purpose. Possibly at that time we can arrange to get together to discuss pending matters.

With kind regards,
Sincerely yours,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: lck.

1355 *Exhibit 110*

SEPT. 5, 1941.

SOFT-LITE LENS CO.,
Squibb Bldg., New York, N. Y.
(Mr. Ray Landis.)

DEAR RAY: As requested in your letter in June, we sent you statement, amount of business, etc., and sent this to you on July 18th.

To date we have had no reply as to your decision, and would appreciate hearing from you, as to whether or not you will classify us as a licensee.

For almost three years we have been classified as an approved wholesaler, and have as you are well aware conducted ourselves in the proper manner.

Frankly we can see no reason that a license should be withheld, and we await your early reply.

Best regards to you and Nat.

Yours Truly,

C. T. SMITH,
Gulf Optical Co.

1356 *Exhibit 111*

BAUSCH & LOMB OPTICAL CO.

Established 1853

ROCHESTER, NEW YORK

NOVEMBER 10, 1933.

BARNETT & RAMEL OPTICAL CO.,
11th & Grand Avenue, Kansas City, Mo.

GENTLEMEN: A recent survey of your account has shown, much to our regret, that the amount of business we have from you is not sufficient to make the continuance of your account, on our books, mutually satisfactory or desirable.

Thanking you for past favors, we remain

Very truly yours,

BAUSCH & LOMB OPTICAL CO.
BEN RAMAKER.

B. A: Ramaker: K.

1933—See a Century of Progress—Chicago—The Bausch & Lomb Exhibit—Hall of Science. Please address reply to the company, attention of the writer.

1357 *Exhibit 112*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows, Soft-Lites Soften the Light

119 West 57th Street,

NEW YORK CITY

FEBRUARY 13, 1934.

BARNETT & RAMEL OPTICAL COMPANY,
Bryant Building, Kansas City, Missouri.

GENTLEMEN: We regret that we find it necessary to discontinue business relations with your firm on the basis of a Soft-Lite Wholesale Licensee. Your firm is, therefore, no longer entitled to the licensee privileges and discounts accorded to wholesalers.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.
G. B. HANNFORD.

GBH: D.
Copy sent to Joplin, Missouri.

1358 *Exhibit 113*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort, Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

NOVEMBER 30, 1937.

Mr. EDWARD ARNOLD,
Arnold Optical Company,
122 South Michigan Avenue, Chicago, Illinois.

DEAR ED: We have just completed a review of the purchases of our customers for the 10-month period of this year, and we regret very much to notice that your purchases for this period are very small indeed. They do not, in fact, equal those of a number of our retail Licensees.

We are desirous of making Soft-Lite Lenses available through all representative quality wholesale houses. However, we do not see our way clear, in fairness to our active Distributors, to continue your firm on this classification when you have not found it possible, as represented by your volume of purchases to date, to develop a more substantial distribution of our product.

We are sorry to be forced to advise you that we shall discontinue your listing as a Soft-Lite Distributor, effective on December 15. Ed Summers will be in to see you very shortly and will thereby be able to make all the necessary arrangements with you at that time.

Kindest regards.

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: DR.

1359 *Exhibit 114*

SOFT-LITE LENS CO., INC.
Soft-Lite Lenses, Greater Comfort, Better Appearance
Squibb Building, 745 Fifth Avenue
NEW YORK CITY

Received order before the 15th.

DECEMBER 16, 1937.

MR. EDWARD ARNOLD,
Arnold Optical Company,
122 South Michigan Avenue, Chicago, Illinois.

DEAR ED: Your letter of December 8th addressed to Nat has come to me because of its being a sales department matter.

We regret that, taking into consideration your Soft-Lite purchases from other Distributors, in addition to your purchases from us, that your total volume still did not warrant our continuing to carry you on our regular wholesale list. This situation still remains as it was when I wrote you on November 30th.

I shall be in Chicago very soon after the first of the year and will be glad to talk the matter over with you further then. In the meantime, may I advise that it is not possible to fill your order No. 2915 calling for 10 pair of 4 mm. No. 1 shade moulded blanks, which are not available, and 15 pair of No. 2 shade moulded blanks, which may only be supplied to Licensees.

We are sorry that things worked out this way, Ed, but it would be best to let the matter rest until it is possible to discuss it in person.

With kindest personal regards.

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.
R. G. L.

R. G. Landis: LCK.

1360 *Exhibit 115*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort, Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

APRIL 1, 1939.

Soft-Lite Distributors:

Enclosed are temporary advance correction sheets revising the listed prices to Soft-Lite Distributors on single-vision uncut lenses, plano meniscus uncut lenses, and certain bifocal blanks, in both Regular Toric and Orthogon Series. These changes are effective April 1st.

A new complete price list to Distributors will be issued soon.

No Change in Single-Vision Focused Uncut Lenses

In the case of single-vision uncut lenses with focus these prices represent a 15¢ per pair reduction from those listed in the Distributor's price list corrected to December 1, 1937. As formerly, a quarterly bonus will be paid in check form at the rate of 10¢ per pair on all purchases of single-vision uncut lenses during each quarter.

These price changes and the quarterly bonus together represent the same reduction of 25¢ per pair on single-vision uncut lenses made effective February 27th. The bonus of 25¢ per pair referred to in our letter of February 25th will be paid on all purchases made between February 27th and April 1st.

New Prices on Uncut Plano Meniscus Lenses

Prices have been established on uncut plano meniscus lenses in various sizes and all shades. While new selling prices to retailers have now been established (listed in the enclosed correction sheets), which are different from those listed in the new Stock Price List of February 27th, we do not feel it necessary to send out an announcement to retailers on this one item before the new printed Stock Price Lists are distributed in the near future. Until that time these new prices should not be quoted. We do not expect that there will be many orders placed by retailers for plano meniscus lenses within the next two or three weeks. Uncut plano maniscus lenses, like all single-vision uncut lenses, are

included in the Quarterly Bonus. No change has been made in Rx prices on 50 mm. Plano Meniscus lenses.

1361 We carry a complete stock of oversize rough-moulded blanks in all four shades, and Plano Meniscus uncut lenses, in the 50 mm. size, in all four shades. Since we have not carried factory-manufactured plano meniscus in sizes larger than 50 mm. heretofore, a manufacturing order has recently been placed for 57 mm., 63 mm., 71 mm., and 80 mm. plano eniscus uncut lenses in six base curve, in all four shades. We expect delivery on these next month. Will you be good enough to send us your anticipated requirements for June, July, and August for the large size lenses so that we may be guided by this information when placing our next manufacturing order?

Price Changes on Bifocal Blanks

Reductions in price to Distributors have been made on Orthogon Soft-Lite "C" and "D" bifocal blanks.

New Reduced Quantity Requirements on Distributors' Orders

In order to facilitate the carrying of a wider range of uncut lens stock in order to care for the considerably increased stock orders from retailers, we have reduced the purchase requirements, as to quantity, for Distributors in placing orders with us to two pairs or more of a kind and focus on uncut single-vision lenses, effective on all stock foci.

Again we wish to point out that it is to your interest to use factory-finished Soft-Lite Uncut Lenses to as great an extent as possible. This is so important from the standpoint of quality and service, and is economical as well.

The new stock price list to retail Licensees was issued for the purpose of making it possible for Soft-Lite Distributors to do a larger Soft-Lite stock business.

The costs to the Distributor were reduced for the purpose of maintaining an adequate profit margin to the Distributor on stock sales of uncut lenses under the lower prices listed in the new 25- and 50-pair columns. However, in order to eliminate any complicated procedure, we did not limit the reduction in cost to lenses used in filling stock orders. Therefore, these reduced costs have resulted in an increase in the margin of profit on Soft-Lite prescription business. Since practically all stock orders call only for uncut lenses, potential stock sales indicated the desirability of concentrating reductions in price on uncut lenses. We, therefore, included the 5¢ per pair formerly paid on single-vision semifin-

ished lenses under the quarterly bonus in the reduction in costs on uncut lenses, since semifinished lenses are used mainly on prescription orders.

1362 The experience gained so far with the new stock price list has produced an even more favorable reaction than we had anticipated. From all territories, we are receiving reports and orders, indicating a very substantial increased Soft-Lite stock business. We believe that this new price list has been one factor in making March sales, this year, the largest for the month of March in the history of the business. We are more confident than ever that this new price structure will produce a greater increased general use of Soft-Lite lenses, to the mutual advantage of all who are concerned in their distribution.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: GS.

1363 *Exhibit 115 A*

Apply over page 8 of distributors price list, corrected to Dec. 1, 1937.

SOFT-LITE SINGLE VISION LENSES

Corrected to April 1, 1939

SOFT-LITE REGULAR UNCUT LENSES

Spheres + or —	*Net price per pair (2 prs. or more of a kind)*
0:12 to 4:00 D	$1.30
4:25 to 6:00 D	1.45
6:25 to 8:00 D	1.60
Plano Cylinders + only	
0:12 to 3:00 D	1.40
3:25 to 4:00 D	1.55
For concave Cylinders use — on + equivalent.	
Sphero Cylinders + on +	
0:12 to 4:00 D Sphere on 0:12 to 3:00 D Cylinder	1.40
4:25 to 6:00 D Sphere on 0:12 to 3:00 D Cylinder	1.70
Sphero Cylinders — on +	
0:12 to 4:00 D Sphere on—	
0:12 to 3:00 D Cylinder	1.50
3:25 to 4:00 D Cylinder	1.70
4:25 to 6:00 D Sphere on—	
0:12 to 3:00 D Cylinder	1.80
3:25 to 4:00 D Cylinder	2.00

For uncut lenses in higher foci, see Soft-Lite Prescription Price List.

SOFT-LITE ORTHOGON UNCUT LENSES

Spheres + or —	Net price per pair (2 prs. or more of a kind)
Plano to 4:00 D	$1.50
4:25 to 6:00 D	1.65
6:25 to 8:00 D	1.80
Plano Cylinders + only:	
0:12 to 3:00 D	1.60
3:25 to 4:00 D	1.75
For concave Cylinders use — on + equivalent.	
Sphero Cylinders + on +	
0:12 to 4:00 D spheres on 0:12 to 3:00 D Cylinder	1.80
4:25 to 6:00 D Sphere on 0:12 to 3 00 D Cylinder	1.90
Sphero Cylinders — on +	
0:12 to 4:00 D Sphere on—	
0:12 to 3:00 D Cylinder	1.70
3:25 to 4:00 D Cylinder	1.90
4:25 to 6:99 D Sphere on—	
0:12 to 3:00 D Cylinder	2.00
3 25 to 4:00 D Cylinder	2.20

For uncut lenses in higher foci, see Soft-Lite Prescription Price List.

1364 Apply over inside front cover of Distributors Price List. Corrected to Dec. 1, 1937.

SOFT-LITE PLANO MENISCUS UNCUT LENSES

Effective as of April 1, 1939

All shades	Prices to retailers				Price to distributor
	2 prs. of a kind or 5 prs. asst'd.	10 prs. asst'd.	25 prs. asst'd.	50 prs. asst'd.	
Size 50 mm	1.85	1.75	1.55	1.35	1.05
57 mm	2.50	2.30	2.05	1.80	1.38
63 mm	3.10	2.85	2.50	2.15	1.71
71 mm	3.60	3.35	2.95	2.55	2.01
80 mm	4.35	4.10	3.65	3.20	2.46

1365 *Exhibit 116*

BAUSCH & LOMB OPTICAL COMPANY

ROCHESTER—NEW YORK

MARCH 2ND, 1939.

Mr. R. G LANDIS,
Soft-Lite Lens Co., Inc.,
New York City.

DEAR RAY: In talking with Nat yesterday, over the 'phone, I learned for the first time (for I didn't read your policy memo-

randum very thoroughly) that you are setting up the extra 15¢ as a part of your quarterly bonus plan. I can appreciate the reason for your doing it, but in a true accounting sense, the quarterly bonus figures on the basis of 25¢ per unit pair is, likewise, a cost reduction to the wholesaler. In any event, I told Nat that our feeling was very definitely that the 15¢ should show as a net price in your policy and price list setup, and my suggestion would be that when you print your new list, you make it a part thereof.

Very truly yours,

BAUSCH & LOMB OPTICAL COMPANY.
BAR.

B. A. Ramaker: K.

A true copy from files of Soft-Lite Lens Co.

G. DEWEY.

1366 *Exhibit 117*

Dictated March 3, 1939, March 6, 1939.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Company,
Rochester, New York.

DEAR BEN: Thank you for the sample copies of the Miller-Tydings Act Contracts which have just been received.

I am taking one copy with me to study and am referring the other to our attorneys.

Also have your letter of March 2nd in regard to our plan of passing on the 15¢ reduction in Distributors' cost through the Quarterly Bonus Plan. Nat and I have discussed this but decided that we would table it until my return from this trip on which I am leaving this Sunday night.

We will discuss it with you further and give it careful consideration immediately thereafter so that we may come to a definite decision and be able to print it when we print our new price lists. We are not going to do anything about the new lists until that time.

With kindest regards,
Sincerely,

SOFT-LITE LENS COMPANY, INC.
RAY.

R. G. Landis: lck.

RAY: Whatever else you do—make the reduction—your list and take it out of Bonus. Before you print again—wait for corrections, etc., of our Feb. 27 list.

BAR., 3/13.

A true copy from files of Soft-Lite Lens Co.

G. DEWEY.

1367 *Exhibit 118*

MARCH 31, 1939.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Co.,
Rochester, New York.

DEAR BEN: I enclose, for your information, a copy of our revised price list to Distributors and the letter announcing this change—i. e.—the listing of single vision uncut lenses at 15¢ lower and the continuation of the Distributors' quarterly bonus of 10¢ per pair.

Thank you for your letter of yesterday. We have not, as yet, received Scott's letter mentioned in yours. Since the distribution of your price lists is to be held up for a couple of weeks we will, of course, withhold ours as well.

I have sent a few extra copies of the enclosed April 1st mailing to you under separate cover so that you may distribute them to those people at the factory who will be interested.

With kindest regards,

Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

A true copy from files of Soft-Lite Lens Co.

G. DEWEY.

1368 *Exhibit 119*

En route Kansas City to Salt Lake 6/18/39.

B. A. RAMAKER:

DEAR BEN: I enclose a sheet showing two possible revisions of the first 2 columns of our Stock Price List (dropping "Non-Stock" column anyway).

No. 1, reduces differential with Cruxite, but reduces Jobbers' gross, though it is still good.

No. 2 maintains a consistent differential with Cruxite and improves Jobbers' gross.

No. 2 seems preferable, considered from all angles, but raises prices to Licensees in column where a lot of buying is done.

Single pair price on cylinders will have to be raised, as it is now 14¢ below Cruxite. Still think spheres should be kept where they are, if possible. (There seems to be a good deal of opposition to 2 pr minimum).

Have sent a copy of this to Nat in Rochester, will get a reaction on Coast, so we can make definite setup after July 4th.

Please excuse appearance as I'm writing on a rough train.

Best,

R. G. L.

Copied from longhand copy by LCK—6/28/39.
A true copy from files of Soft-Lite Lens Company.

G. DEMEY.

1369 *Exhibit 120*

DECEMBER 17, 1935.

To: Mr. C. S. Hallauer.
From: B. A. Ramaker.

As you know, the Soft-Lite Lens Company contemplate making a change in Balcor and Orthogon single vision lens prices so as to place them in a better position from a competitive standpoint. As a means of assisting them to meet this situation, we have written them today advising them that our prices—effective as of the date of the publication of their new prices—will be based on White single vision lens setup on both uncut and semi-finished, adding a 10¢ differential less the usual one-third discount. On glass blanks, we have made the differential 15¢ list.

Strangely enough, this whole procedure—priced out on the basis of eleven months unit sales this year—indicates that the present price setup produces an income of $172,300 to us; the new price value—$175,050. In other words, our loss would be the difference or $250.00.

We are not able to state definitely the extent of his revised prices to the Wholesaler for we have not seen the complete schedule. On uncuts, he is taking about 20¢ list off the price so that apparently he is making an honest effort to deal adequately with the situation. However, we can tell the whole story when we see the new price list on semi-finished and rough blanks.

We have gone ahead without your OK, knowing that the results were such that you would be satisfied in any event.

OPTHALMIC SALES DEPT.
BEN RAMAKER.

B. A. Ramaker: K

1370 *Exhibit 121*

MARCH 10, 1936.

SOFT-LITE LENS COMPANY,
119 West 47th Street, New York City.
Attention: Mr. R. G. Landis.

GENTLEMEN: This is to confirm the understanding arrived at on Friday, March 6, regarding future billing of Soft-Lite lenses and lens blanks, to become effective April 1, 1936.

Current prices and discounts prevailing on Balcor (50 series) and Orthogon white lenses, will apply to Soft-Lite lenses.

Future prices of Soft-Lite lenses in Orthogon and Balcor single vision uncut and semi-finished lenses will be based on our white prices according to our current stock price list, dated February 16, 1936, with the understanding that the schedule pertaining to distributors purchases submitted by the Soft-Lite Lens Company remain in force and effect.

To the white prices listed, we will add 10¢ per pair list for uncut less 33⅓%. To the white prices listed for semi-finished, we will also add 10¢ per pair less 33⅓%. To the white moulded blank prices listed, we will add 15¢ per pair list less 33⅓%.

Until such time as we have moulded blanks of 50 mm. diameter available, we will supply 51 mm. blanks at the price of 50 mm.

Uncut and semi-finished Soft-Lite lenses will be billed on the same basis as white lenses, according to the range of stock foci as indicated in our stock price list. Odd foci will be billed at 25¢ per pair extra, such odd foci determined from our stock charts. This is with the understanding that sales of Soft-Lite lenses to
1371 distributors will be on the same basis as white and that the range of stock foci in Soft-Lite will be identical with the range of stock foci in white on distributors purchases.

Our acceptance of this basis for billing is contingent upon maintenance of the resale policy of the Soft-Lite Lens Company as outlined in your letter, "To Distributors on Prices," to the effect that a reduction of 10¢ per pair on single vision uncut, and .05¢ per pair on single vision semi-finished Soft-Lite lenses, will be made from prices listed in your special net "Stock Price List to Distributors." In the event of any change in policy, the amounts cited shall be passed on to the distributors in another form.

Current prices of bifocals will remain in effect except Orthogon "D" and "C" bifocals. For Orthogon "D" and "C" bifocals, we will use the listed white prices, plus 20¢ per pair list for Soft-Lite less 33⅓%.

This will also confirm the discussion and understanding to establish a new extra on prescription of $5.00 per pair for Laminex to

the trade. Our extra charge for Laminex to the Soft-Lite Lens Company on prescription will be $3.00 per pair list, less 10%.

In extending to the Soft-Lite Lens Company these prices which are based upon the current extras of 10¢ per pair list extra for single vision uncut Soft-Lite over white, 15¢ per pair list extra for moulded Soft-Lite blanks over white, it is to be understood that this schedule of prices does not in any sense establish a precedent for future pricing of lenses to the Soft-Lite Lens Company by this company.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
Lens Sales Department.

F. J. Koeth: TD.

1372

Exhibit 122

To Distributors.

SOFT-LITE LENS COMPANY, INCORPORATED

OUTLINE OF INFORMATION REGARDING NEW PRICE STRUCTURE

Prescription Price List

The new complete Soft-Lite Prescription Price List, a copy of which is hereto attached, supersedes the single-vision and bifocal price lists of August 1, 1931, and of February, 1935, respectively. It is for Soft-Lite Licensees only. A quantity of these price lists, bearing your imprint, will be shipped to you tomorrow, for insertion in the special imprinted envelopes sent you last week. The price lists, being effective as of April 1, should be mailed so as to reach all of your Soft-Lite Licensees by that date.

The changes in the Prescription Price List are minor. They are harmonious with present practice and provide a more convenient set-up for the prescription buyer. The Soft-Lite Licensee will appreciate these changes as being in his best interests. The introduction of the edged column—the pricing of spheres below that of cylinders—means a lower cost to the Licensee. The change in the first spherical division and in the additional charge for concave cylinders is in line with modern price structure.

You will notice that Soft-Lite "C" bifocals are now made in Nokrome construction on the same base curves as Soft-Lite "D" bifocals and are listed at the same prescription prices. Blank prices to you on Soft-Lite "C" bifocals have been slightly revised, accordingly.

To provide a listing of the complete Soft-Lite bifocal service, regular toric Soft-Lite Ultex, made and sold by the Continental Optical Company, is listed on the Soft-Lite Orthogon Ultex page in the Prescription Price List. Blanks are, of course, available from the Continental Optical Company in accordance with their prices and terms.

Stock Price List

The new Soft-Lite Stock Price List, a copy of which is attached hereto, supersedes previous stock lists. It is intended only for Soft-Lite Stock Licensees and in the Othogon Soft-Lite form for Orthogon Franchise Dealers. A copy of the Stock Price List will be mailed to every Soft-Lite Stock Licensee and Orthogon Franchise Dealer direct from New York so as to reach all Stock Licensees and Orthogon Franchise Dealers on or before April 1. Additional copies will be sent to you for your organization use.

Uncut Soft-Lite Lenses are available to Non-Stock Licensees at uncut prices as shown in the Soft-Lite Prescription Price List. The prices listed in the Stock List are, you will note, lower than the uncut prices in the Prescription Price List. May we suggest that in contacting Stock Licensees, your sales representatives advise them that there is under consideration a policy whereby the lower stock prices as quoted in the Stock List will not be available to Inactive Licensees? Inactive Licensees would then purchase uncut Soft-Lite Lenses as do Non-Stock Licensees, namely, at uncut prices as in the Prescription Price List.

1373 These new stock prices and terms should be most favorably received by Soft-Lite Stock Licensees and Orthogon Franchise Dealers. The opportunity it affords of effecting a saving through small-quantity purchases will be appreciated. This has been brought about without increasing the single-pair price appreciably—and then only on cylinder combinations. The Stock Licensee will appreciate the fact that whereas the Soft-Lite stock discount has been reduced on single pairs, the net cost is identical to the prices for uncut lenses as shown in the Prescription Price List less 33⅓%; whereas Stock Licensees will still be purchasing at discounts from list prices, the net prices in the columns, as shown in the Stock Price List, will be a matter of greater convenience to them. In every way, then, the new price list has advantages over the former ones for the Retailer as well as for the Wholesaler.

Please note the listing of stock and nonstock numbers as shown in the back of the attached Stock Price List, and the rules and regulations pertaining thereto as described therein.

The practice that has been in effect in the past is to continue in reference to Soft-Lite Stock Licensees, who are not Orthogon Franchise Dealers, being permitted to purchase Soft-Lite Orthogon uncut lenses, and similarly, Orthogon Franchise Dealers who are not Stock Licensees to purchase Soft-Lite Orthogon uncut lenses in accordance with the terms applying thereto in the Stock price list.

The lower quantity prices to Stock Licensees and Orthogon Franchise Dealers make it possible for them to increase their profit on regular Toric or Soft-Lite Orthogon Lenses. These assist Soft-Lite Distributors in inducing retail Stock Licensees, to maintain adequate lens stocks. This, we feel, is a decided improvement, not only from the standpoint of making quantity stock orders possible to obtain, but because the carrying of sufficient stocks will automatically cause a greater usage of Soft-Lite Lenses by the Licensee and will make it considerably less likely that Licensees will purchase cheaper imitative lenses. Furthermore, the change in focus divisions and lowering of Sphere prices below Cylinders makes it easier to combat price comparisons on a more equitable basis.

For Your Salesmen

This new Stock Price List gives the Distributor's salesman sales advantages which he has been anxious to have. It gives him, particularly, the opportunity to obtain quantity lens stock orders by offering his Stock Licensee customer a saving in price on quantity orders. This should undoubtedly result in increased interest and activity on the part of the salesman in behalf of Soft-Lite Lenses.

For You

Not only is your gross profit per pair slightly increased, but you will have a set-up which enables you to make stock sales on a volume basis, and reduce the amount of service and stock-carrying thereby as well. Considering the advantages of the new stock price set-up from every standpoint, we feel that it should be of real assistance to you in increasing your Soft-Lite sales.

Distributors' Price List

All Soft-Lite Lenses and lens blanks in single-vision and bifocals (excepting Soft-Lite Panoptik blanks) are to be billed to our Wholesalers on a net price basis as shown in the attached Distributors' Price List. These new net prices are very nearly the same as your previous average net costs for the same Soft-Lite

Lens forms. In addition, all Distributors will earn a quarterly bonus on purchases of single-vision uncut and semifinished lenses. There is no minimum-purchase requirement in order to earn this Bonus. At the end of each quarter a check will be mailed to the Distributor, figured at the rate of 10¢ per pair on all Soft-Lite single-vision uncut lenses, and 5¢ per pair on all Soft-Lite single-vision semifinished lenses purchased during the preceding quarter. As a result, with this Bonus included, the margin of profit to you is better in every respect than heretofore.

Please note the attached copy of the new net price list to the Class "A" Wholesalers. These are the prices at which they buy from us and at which they may purchase from you as a Soft-Lite Distributor. The Bonus plan applies to Distributors only and does not apply to purchases by Class "A" Wholesalers.

Extra Profit

A Profit-Sharing Plan is provided for 1936 in which all Active Distributors who qualify will share. The provisions of the Plan are described below:

Profit-Sharing Plan—1936

Using 1935 as the basis, we have evolved a plan in which a share of the profits resulting from an increase in our total business over that of 1935 will be divided with those of our Distributors who have helped us to obtain this increased business. Under this plan 10% of the increase in the dollar value of our total domestic business in 1936 over that of 1935 will be set aside for division among qualifying Distributors only. This division will be determined by the percentage which the dollar value of the Distributor's annual purchases bears to the dollar value of our total annual domestic sales.

It must be borne in mind, of course, that since all Distributors may not qualify the individual shares of the qualifying Distributors will be increased accordingly. The amount is likely to be equivalent to that of a cash discount, or the major part thereof.

To Qualify

Distributors will be expected to render territorial sales and advertising activity that will make for increased distribution of Soft-Lite Lenses. The volume in 1936 should at least equal, in both units and dollars, their volume of 1935. This extra profit will be added to the Distributor's Bonus check for the last quarter, namely, next January.

NOTE.—Any additional information or price lists will be gladly sent to you upon request.

1374 *Exhibit 123*

SOFT-LITE LENSES

Price List for Soft-Lite Distributors, April 1, 1936

SOFT-LITE LENS COMPANY, INC.
119 West 57th Street, New York

1375 SOFT-LITE SINGLE VISION LENSES

SOFT-LITE REGULAR TORIC UNCUT LENSES

	Net price per pair
Spheres + or −	
Plano to 4:00 D	$1.45
4:25 to 6:00 D	1.60
Plano Cylinders + only:	
0.12 to 3:00 D	1.55
For concave Cylinders use − ◇ + equivalent.	
Sphero Cylinders + ◇ +	
0.12 to 4:00 D Sphere ◇ 0.12 to 3:00 D Cylinder	1.55
Sphero Cylinders − ◇ +	
0.12 to 4:00 D Sphere ◇ 0.12 to 3:00 D Cylinder	1.65

SOFT-LITE ORTHOGON UNCUT LENSES

	Net price per pair
Spheres + or −	
Plano to 4:00 D	$1.65
4:25 to 6:00 D	1.80
Plano Cylinders + Only:	
0.12 to 3:00 D	1.75
For concave Cylinders use − ◇ + equivalent.	
Sphero Cylinders + ◇ +	
0.12 to 4:00 D Sphere ◇ 0.12 to 3:00 D Cylinder	1.75
Sphero Cylinders − ◇ +	
0.12 to 4:00 D Sphere ◇ 0.12 to 3:00 D Cylinder	1.85

For uncut lenses in higher foci, see Soft-Lite Prescription Price List.

SOFT-LITE REGULAR TORIC SEMI-FINISHED LENSES

	Net price per pair
Spheres + or − 6.00 B. C.:	
3 mm	$1.15
4 mm	1.25
5 mm	1.35
6 mm	1.45
Cylinders + 6.00 B. C.:	
3 mm 0.12 to 3:00 D	1.35
3.25 to 6:00 D	1.50
Cylinders + 6.00 B. C., + 7.50 B. C.:	
4 mm 0.12 to 3:00 D	1.45
3.25 to 6:00 D	1.60
Cylinders + 9.00 B. C.:	
4 mm 0.12 to 3:00 D	1.45
3.25 to 6:00 D	1.60

SOFT-LITE ORTHOGON SEMI-FINISHED LENSES

	Net price per pair
Spheres:	
Groups A to M	$1.40
Cylinders:	
Groups A B C D E F H J K:	
0.12 to 3.00 D	1.55
3.25 to 6.00 D	1.70
Cylinders:	
Groups G L M:	
0.12 to 3.00 D	1.65
3.25 to 6.00 D	1.80

1376 **SOFT-LITE BLANKS**

SOFT-LITE MOULDED BLANKS

FLAT OR + 6.00 BASE CURVE

	Net price per pair			
	3 mm	4 mm	5 mm	6 mm
51 mm round	$0.80	$0.88	$0.95	$1.03
57 mm round	1.10	1.20	1.25	1.30
63 mm round	1.30	1.40	1.45	1.50
71 mm round	1.50	1.60	1.65	1.70
80 mm round	1.75	1.80	1.85	1.90

All blanks are available in Nos. 1, 2, 3, and 4 shades except 51 mm round, 3 mm and 4 mm thick, which are available in only Nos. 2, 3, and 4 shades.

THIN-LITE MOULDED BLANKS

FLAT OR + 6.00 BASE CURVE

	Net price per pair	
	White	Soft-Lite
67 mm round:		
4 mm thick	$1.00	$2.00
5 mm to 6 mm thick	1.25	2.25
7 mm to 8 mm thick	1.50	2.50
9 mm to 10 mm thick	1.75	2.75
51 mm round:		
4 mm thick	1.50	2.50
5 mm to 6 mm thick	1.75	2.75
7 mm to 8 mm thick	2.00	3.00
9 mm to 10 mm thick	2.25	3.25

SOFT-LITE LAMINEX BLANKS

SEMI-FINISHED

	Net price per pair
Style "A"	$3.00
"B"	3.10
"C"	3.25
"K"	4.00

Blanks available in special sizes. Prices will be quoted on request.

SOFT-LIGHT BIFOCAL BLANKS

DUO-SITES

	Net price per pair
Rough Blanks	$2.50
Semi-Finished Blanks. 6.00 and 8.00 Base Curve	3.00

Usual extra charges apply for special sizes, shapes, etc.

SEMI-FINISHED SOFT-LITE ORTHOGON BIFOCAL BLANKS

	Net price per pair
One Piece Construction:	
Style "A" segment size 38 x 19 mm	$4.50
"AA" segment size 38 x 30 mm	5.00
"B" segment size 22 mm round	4.75
Fused Construction:	
Style "C" segment size 16 mm round	4.00
Style "D" segment size 30 mm round	4.00
Add to above for Styles "A," "AA," and "B":	
For prism on reading portion, base in or base out 3.50△ or less	3.50
For prism on reading portion, base in or base out, stronger than 3.50△	4.50
For prism on reading portion, base up, base down, or base oblique 3.50 or△ less	6.50
For prism on reading portion, base up, base down, or base oblique stronger than 3.50△	7.50
For reading addition stronger than 4.50 D	1.50

SOFT-LITE PANOPTIK BIFOCAL BLANKS[1]

	Price per pair	
	Rough	Semi-Finished
A B C D E K	$7.25	$8.75
AX BX CX	8.25	9.75
P R	10.25	11.75
P S	12.25	13.75
Cataract	14.50	17.50

[1] Available only to Licensees and subject to the provisions of the Panoptik Company, Inc.

1377 *Exhibit 124*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows Soft-Lites Soften the Light

119 West 57th Street

NEW YORK CITY

MARCH 13, 1936.

Mr. F. J. KOETH,
Bausch & Lomb Optical Co.,
Rochester, New York.

DEAR FRED: Thank you for the detailed memorandum in your letter of March 10th covering our discussion of the new April 1st Soft-Lite prices which we had at our meeting in Rochester last Friday, March 6th.

As time is quite short, I am, at this writing, commenting only on the portions where your memorandum is not in accordance with our discussion. This concerns the 6th paragraph in which all Soft-Lite uncut and semi-finished lenses in all four shades are to be billed on the same basis as white lenses; and in the 9th paragraph which confirms your extra charge on Soft-Lite Laminex factory-made prescriptions to be billed to us at $3.00 extra, less 10%. This is correct, but, as you know, we have a regular price to us on Soft-Lite Laminex semi-finished blanks and we are listing Soft-Lite Laminex lenses and blanks in our new prescription and stock price lists at the established prices which have been in effect for some time and not at an extra charge over the prices obtaining on white Laminex.

The balance of the contents of your letter will have to be held for discussion with Nat, upon my return to the United States.

We are going right ahead with the completion of our new price lists to be effective April 1st and we hope that our expectations that they will prove profitable and satisfactory for all concerned will be fulfilled.

With kindest regards, I am,
Sincerely yours,

SOFT-LITE LENS COMPANY, INC.
R. G. L.

R. G. Landis: LCK.

1378 *Exhibit 125*

MARCH 17, 1936.

Mr. NAT SINGER,
Soft-Lite Lens Company,
119 West 57th St., New York City.

DEAR NAT: This is to acknowledge receipt of Ray's letter of March 13 acknowledging receipt of our letter of March 10 which covers in detail our meeting of Friday, March 6.

Ray reminds us that we omitted to mention in that letter the fact that all four shades of Soft-Lite are to be billed on the same basis.

Please add to our letter of the tenth, the words, "in all four shades" to the first line in the sixth paragraph immediately following the word lenses, so that it will read, "Uncut and semifinished Soft-Lite lenses in all four shades will be billed on the same basis as white lenses," etc., etc.

In this letter Ray also mentions that in your price list, you have set up prices for Soft-Lite Laminex, rather than to use the extra suggested during the course of our discussion. We still feel that it will be a mistake to set up a list of Laminex prices rather than to use simply an extra, because too much emphasis will be placed on a separate set-up, whereas we do not wish it to be too prominent, thus giving it the flavor of a regular product. Our intention was to have it available in the form of an extra for special or extra cases, since no effort should be placed behind its sale.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
Lens Sales Department.

FJKoeth: TD.

1379 *Exhibit 126*

SOFT-LITE LENS CO, INC.

Like Cathedral Windows Soft-Lite Lenses Soften the Light

119 West 57th Street

NEW YORK CITY

MARCH 18, 1936.

Mr. F. J. KOETH,
Bausch & Lomb Optical Company,
Rochester, New York.

DEAR FRED: Nat has turned over to me your letter of March 17th, addressed to him, on a matter you have been corresponding

with Ray on, and has urged that I look into the details of it and give you a prompt reply. This covers a routine matter—my province here—and then, too, I am batting for Ray in his absence.

We have made the changes as regards "all shades" in your letter on the 10th, as suggested by you.

In regard to the listing of Laminex, we agree with you in the thought that Soft-Lite Laminex should not be given prominence, and it was so done. From a talk I had with Ray after his return from the meeting of March 6th, it was my understanding that you were acquainted with the fact that we were giving it a separate listing. The price lists were O. K'd. the day after Ray's return and are in the hands of the printer now and we expect to have the completed copies in a few days, so, of course, it was too late to do anything. Fortunately, however, Soft-Lite Laminex is listed on the last page of the price list, where it will certainly not be very conspicuous, for neither are we at all anxious to feature it. And, of course, no special effort has been planned to further its sale.

With kindest regards,

Very truly yours,

SOFT-LITE LENS COMPANY, INC.

DON

DSteers:s.

1380 *Exhibit 127*

MARCH 31, 1936.

Mr. A. D. ASHMORE,

Reading, Pennsylvania.

DEAR AL: In response to your letter of the 30th, we are sending you three more copies of the Soft-Lite prescription list, and also the stock licensee list.

In addition to this, we are sending you a price list for Class A Wholesalers, which in your particular case means the Reading Optical Company, and Berks Optical Company.

You understand of course, that there are no discounts to anyone on Soft-Lite lenses. They are all billed at the prices quoted in the various lists, without any discounts.

If this is not clear to you, let us know immediately.

Yours very truly,

McINTYRE, MAGEE & BROWN CO.

SRI:HB.

1381 *Exhibit 128*

RAY: Please destroy this copy after you have read it. Will have another one here on your return. You and I can discuss same at our coming conference.

NS.

Confidential.

Dictated June 26, 1939, June 27, 1939.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Company,
Rochester, New York.

DEAR BEN: Really, Ben, we had a swell, as well as an interesting visit in Rochester last week. Gene was with us Saturday night and he again mentioned how wonderfully he was entertained by the Ramakers and our good friends in Rochester. For my part, both for your sincere hospitality to me and to my good pal, Gene, I, too, am very appreciative. Many thanks. Hope we may have the opportunity to extend our hospitality to you all real soon. Also, Gene asked me to remind you of his invitation to visit Fairview.

We certainly covered a number of subjects in Rochester last week, and what was left undone was well covered enroute to New York and in New York at that eventful little meeting at the Biltmore. So that we may have it for our records, I am making a resume below and would appreciate your comments re same, to insure our understanding being fully mutual, and furthermore, would appreciate any suggestions that may help us in the solution of any of the matters under discussion.

As regards the 47 mm. series, we are in accord that it would be unprofitable to you, to us and to the Affiliates, in endeavoring to salvage these lenses in the U. S. A. market. Our export sales, especially in South America, may prove to be a potential market, and perhaps when trade restrictions in Great Britain are reduced, that, too, may be a potential market for their subsequent absorption. We would not destroy them, of course, as in some way, some day, between us, we ought to be able to utilize them in some foreign marts.

The pros and cons of our changing column heading and instituting, at this late date, a new, relatively high single pair price, were covered real well at our Biltmore Hotel conference. You and Scott kindly agreeing to give it all further consideration and sending us suggestions as to how this might well be accomplished, without endangering our mutual growing Soft-Lite sales, is ap-

preciated. You have the figures and the experience. Scott's suggestion that perhaps a slight change be made in foci divisions, maintaining present rates for the first (reduced) divisions and increasing where needed in the new higher divisions, sounds good. Shall await these proposals with much interest. In the meanwhile, our men have been cautioned (confidentially, of course), to permit of no comparisons, let alone make them, as between our present set-up and the ones now prevailing. They were given to understand that the slight differences are perhaps only tentative and not permanent, and the less said about ANY differences, the better * * * in fact, not to talk about it at all.

1382 Ray and I, I might add, both wish to conform. We all agree, though, that after our policy has been in effect so many years, any sudden change might prove very costly. THIS HAS OCCURRED TO ME SINCE OUR CONFERENCE, BEN. After all, Soft-Lite from a price range, is on a parallel with white fused bifocals . . . and the two pair condition was not instituted on white bifocals, as I understand it, because the price range is so much higher than prevails on white single vision lenses. This is a further justification, I believe, but as we all agreed, we want to do what we can to conform without losing too much business nor, on the other hand, losing our well-earned and carefully protected "being different" identity which has really been helping us all. In this I believe we are all in accord. Will wait to hear further on this subject from you all. Ray and I will be conferring next Monday or Wednesday, upon his return from the Coast. Would like to have that data for the conference with Ray.

For your own information, and following your kind suggestion, we have decided to take the boat to Mexico City. It sails the latter part of next week and although it will take three days more than the straight train ride from here, it will be relaxing, and that Rosedear and I both need. Our plan is to stay there for two weeks, and for the first time in years, we hope to have an honest-to-goodness full-fledged, unworried, non-business vacation. Will arrange with Ray to keep me posted on urgent matters solely. Ray will be in touch with you regularly and so, through you both, I will be kept informed on any urgent matters. Incidentally, I plan to be back the end of the month. Can easily make it a few days earlier, if desirable that I be present at your "family" meeting in Rochester the end of next month. Please, Ben, feel frank to "include me out" or "include me in", as may best suit your factory purposes or this particular occasion. Either way will be agreeable to me and will be "understood" by me . . . truly. Would, however, like to know by early next week so as to be able to plan our return from Mexico that much more definitely.

At our meeting here I suddenly got an inspiration, you will recall, to have us act as hosts to a selected group of our very good friends—the Executives at Bausch & Lomb, "our factory," and the visiting Affiliated Executives and their wives—here in New York immediately following your Affiliated Meeting. You could all arrive here by train, boat, and/or car on Sunday morning or evening. We would plan a two day "social conference" here—that is, for Monday and Tuesday, primarily spending the time at a "personally conducted tour" of the Fair, daytime and evening. The second evening we would "celebrate" here in New York City, perhaps with the assistance of some of our good theatrical friends either at our home or at a fine restaurant downtown. In that way those who have to return at Rochester that midnight could easily do so. The occasion—if one is needed for a "grateful customer" to "its factory" and the leading Distributors, to show its appreciation, is the FACT that our fine relationship with Bausch & Lomb started in May 1924. Our first check, for about $1,700 (for Kryptok Soft-Lite blanks, as we recall it) was sent in June. So—we have the occasion . . . the Fifteenth Anniversary of our doing business with "our" factory, all good friends, and they as happy as we are, I am sure, to celebrate that real event. It will also enable us to celebrate the passing of the Five Million mark sale of Soft-Lite Lenses. You were going to see how the idea 1383 would take. If okay, please advise soon, as plans would have to be made, and some of it started before I leave for the West. Important. We would love to do the above and would ENJOY doing it, and the fact that the FAIR is here would afford our visitors the opportunity to enjoy that, as well as whatever we can get together to amuse and interest them here in the little old New York. We will do our best.

This letter is getting too long—and I know, Ben, how you abhor lengthy missives—yet my excuse is that it covers a number of subjects, contains resumes, and should be sent on to you, as we like you always to be kept informed on what our plans and views are. We also feel that you should be informed of whatever dealings we may have with your other departments so that you might more easily, by being better informed, more ably carry on in our behalf.

So, Ben, I shall attempt to cover briefly what is "in the works" in Ted Drescher's and Carl Bausch's departments and cover the interesting conference held with Ted Drescher last week in his office. Incidentally, I want you to know that the kind of fine spirit and cooperation Ted has given us makes for added good will. Unfortunately, Carl Bausch was away and Ted kindly stated that he was and would put Carl on any matters under consideration that came under Carl's department. So here goes:

You and Scott are familiar with our problem and the urgency of finding ways to further identify our lens so that we can cash in more and more on our efforts and make it indirectly more difficult for imitators to do so, at our expense and yours, Ben.

Ted advises that the problem is a knotty one insofar as introducing into our glass an unusual; not easily imitated "foreign" ingredient that will make for a clear differentiation through its special "different" color when made to fluoresce from all other pinkish or rose-tint lenses, as well as the present Soft-Lite lenses. If any slight changes in absorption curves are necessary, this may be permissible, after a study of just how far "different" the new chart would be from the old—that is, on the present glass absorptions. Ted advises that they have a very rare element or ingredient that would do just what is so highly desired by us but the resultant glass tends to fade more than does our present glass. If this can be licked—and it is SO worth while trying to accomplish—we have the answer.

Ted felt, however, that as that accomplishment is still in doubt, the fact that the new identification (that is the new trademark as now appears on your Orthogon "D") is now ready for use (it is up to the sales department and to us, as I understood it from Ted) that that should suffice and that the fluorescence may then be de trop (unnecessary). I thought so, too, at the time but have since given it much thought. I would men, Bean,—and please get this thought across to Ted and Carl Bausch—that from a SALES angle, we could not so early or definitely or fully differentiate as with a fluorescence differential as well as the new trademark. For example, if we had BOTH we could announce it (whenever a complete stock was available AND we got your okay to do so!) at the one time. We could then announce that the NEW Soft-Lite was made in the new shape (in fact if the fluorescence could be brought about soon enough, I personally would prefer that you do NOT make present non-fluorescence, non-identified lenses or lens blanks into the new size or shapes that are under con-
1384 struction)—and that ONLY the NEW Soft-Lite was made in the new size (shape). We would announce that each new Soft-Lite is DOUBLY identified, and because of such is available SOLELY in uncut and semi-finished form (but old stock still available in rough moulded blanks when absolutely needed in that form!).

Also, we could get up a campaign on this and more quickly get away from imitations. That, in itself, should "save" for us both thousands of pairs per annum. Incidentally, we could prepare such a "campaign" between us, so that you could try out the trademarking "idea" in the form of a trial balloon on us, and gladly, as we have always had all our lenses carry your former trade-

mark and always admitted it. We have, in fact, often bragged about it, as is our won't! So that is why we are so anxious to get the fluorescent materials incorporated in our slightly revised (improved, if possible!) glass, ground only in the new shapes, and solely in uncut and semi-finished form, and to include the new No. 3½ Shade that Carl and Ted have been working on and that is due to be ready by the first of July or thereabouts, Ted advised.

Ted also stated that the new glass, in all its shades, could be in addition to the identification offered by the new trademark, be further identified under a probably rather costly Spectromometer. This is always an added sales point yet from a point-of-sales standpoint not really sufficient for our SALES needs. Ted also states that some experimental work will be done on trying to give us a glass to replace our present IMPORTED Thin-Lite, in white and Soft-Lite, which will have the advantage of less or no lead, less weight and perhaps other improvements. This is not likely available for some time, if at all, yet if it can be produced, we could concentrate 100% then on Bausch & Lomb glass, and incidentally, increase our sale of high index blanks—perhaps even making such available in semi-finished form as well.

The Dualens—and this hurts me particularly, Ben—Ted unsold me on trying to do anything more with. I wish it could be done but I think Ted put the finishing touches on that for me for I had to agree it wasn't worth the factory spending more time and money on. Alas and alack!—a Nat Singer IDEA that didn't come through! I still like it, but it can't help us to more profitable sales so we shall have to let it rest in peace.

And this, friend Ben, brings us right up to date. Again I apologize for the lengthiness of this letter and ask you to bear with me because it covers such a lot of ground.

With kindest regards, I remain

Sincerely yours,

N Singer: lck

A True Copy from files of Soft-Lite Lens Company

G. DEWEY.

1385 *Exhibit 129*

CC: Mr. R. D. Wetmore, Riggs Optical Co., Chicago.

MAY 27, 1940.

Mr. A. R. SCHRADER,
Riggs Optical Company,
58 East Washington Street, Chicago, Illinois.

DEAR GUS: I attach a photostatic copy of our proposed new single vision prescription price list. The various differentials

will be easily evident to you by looking at the headings of the various columns.

It is possible that it may be desirable to introduce this list on the three column basis. In order to determine just how this would work out, we have sent this to you, as well as for your information, to prevail upon your ability and experience as a price list expert, to set it up on the three column basis, to see how it would work out.

We discussed this with Roy last Friday. He is entirely familiar, therefore, with what is in mind, and I might suggest that you discuss it with him.

Best regards, Gus.

Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis:lck.
encl.

1386 *Exhibit 130*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort, Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

JUNE 4, 1940.

Mr. A. R. SCHRADER,
Riggs Optical Company,
58 East Washington Street, Chicago, Illinois.

DEAR GUS: This will reply to your two letters of May 29th. I agree in that the subject of this correspondence cannot be definitely settled via correspondence and as soon as it is possible to take any definite action, I will arrange to discuss it with you thoroughly in person.

Generally speaking, I think that your proposal looks good and will probably fill the bill pretty well for this kind of a set up. The 12¢ lower average selling price to the retailer is, of course, balanced by the 15¢ reduction in prices of uncut lenses given to all Distributors on February 25, 1939, at the time that we put our new stock set up into effect. Therefore, the average gross profit on prescription sales which existed up to this date would under the new set up, be increased by practically 3¢ per pair.

I agree, also, on the matter of the differential between regular (Balcor) series and the Orthogon series. The 35¢ differential

would still be desirable and a good selling point, from the standpoint of the retailer.

Thanks very much, Gus, for your helpful assistance in this matter. I will be in further touch with you when and as it is possible.

With kind personal regards,

Sincerely,

SOFT-LITE LENS COMPANY, INC.
RAY.

R. G. Landis:lck.

1387 *Exhibit 131*

JUNE 6, 1940.

Mr. R. G. LANDIS,
Soft-Lite Lens Company,
Squibb Building, New York City, New York.

DEAR RAY: Since sending you our suggestions on the revision of Soft-Lite prescription prices, we have had an opportunity to do some further research work and we have a better idea to offer.

We will go into this entire subject in detail with you at a later date.

With best wishes, remain,

Sincerely,

RIGGS OPTICAL COMPANY,
A. R. SCHRADER.

ARS/s.

1388 *Exhibit 132*

SOFT-LITE LENS CO., INC.

Squibb Building

745 FIFTH AVENUE, NEW YORK CITY

JUNE 10, 1940.

Mr. A. R. SCHRADER,
Riggs Optical Company,
58 East Washington Street, Chicago, Illinois.

DEAR GUS: Just a note to acknowledge receipt of your letter of June 6th.

I will be much interested in going over with you the further suggestions which you have to make in regard to the subject of your letter.

Best regards, Gus.

Sincerely,

SOFT-LITE LENS COMPANY, INC.
RAY.

R. G. Landis: lck.

1389 *Exhibit 133*

JULY 10, 1940.

MR. N. SINGER,
Soft-Lite Lens Co., Inc.,
New York City.

DEAR NAT: Enjoyed reading your letter of the 8th. At the moment, I haven't any plans for coming down to New York unless, of course, I am forced to some time during the next thirty days. However, you never can tell.

We are having a lens meeting today with the management and this will be the first opoprtunity that I have had to report to them on how we have made out with our Affiliated people over the past several months. Along with it, Scott and I are making a very definite recommendation as to what course of action we should follow. If the result is as we anticipate it, then I will probably suggest to you (even at the expense of a little inconvenience to you and Ray) that you come down to Rochester some time within the next week or ten days, so that we can clear up your part of the picture, for when we make a move I think the Soft-Lite Lens Company should do likewise. My feeling is that we have done enough talking about it so that the decision is now up to the management here at Rochester. When that is reached, we will then be free to go ahead with the necessary pricing and policy details, to you may expect to hear from us on this question.

Helen and I haven't made any definite vacation plans as yet, but we expect to do so within the next few weeks. I want to get away for several weeks at least, during the month of August if I can. Incidentally, if I can persuade Dan to breathe some mountain air in contrast to suffering with hayfever, as he usually does, as you know, we will probably go away together, in which event it would be very nice if you and Rose could join us.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. RAMAKER: K

1390 *Exhibit 134*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort—Better Appearance
Squibb Building, 745 Fifth Avenue
NEW YORK CITY.

JULY 11, 1940.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Co.,
Rochester, New York.

DEAR BEN: In reply to your letter of July 10th, it is indeed good news to learn that some definite steps are likely to be taken on a matter which really should have action. Ray and I will be very glad to come up just as soon as we hear from you.

I hope the meeting will take place some time next week as I will be in town then, as I wrote you. Ray was considering starting his vacation on Monday but he was not quite definite about it. If there is any chance of getting the new set-up into being soon, I am sure that he would be very glad to wait another week before he leaves. I don't know what his vacation plans are but I know I will be up in Maine the week after next.

When we meet, I will be very glad to talk with you about the August vacation plans. It would be fun being with you, Helen and Dan: Here's hoping you can get Dan to go away with you, yet I am willing to bet that it will be a difficult feat to accomplish. I hope you are successful, though!

Best regards, Ben.

Sincerely,

NAT.

N. Singer: lck.

1391 *Exhibit 135*

JULY 12, 1940.

Mr. N. SINGER,
Soft-Lite Lens Co., Inc.,
New York City.

DEAR NAT: Referring to your letter of the 11th. We have now reached an agreement with the management as to where we are going on this bifocal program—including the question of factory stock prices and prescription prices. As I said to you in an earlier letter, I think it would be a good idea if you and Ray would come to Rochester to talk over your part of the program

with us, for I recall there was some misunderstanding about it a few weeks ago. As far as I am concerned, Tuesday or Wednesday—July 16th or 17th—are the best dates; or if you prefer it, Friday the 19th. I don't want to wait until the following week.

Let me know by return mail as to just when you will come in.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. Ramaker: K.

1392 *Exhibit 136*

Copy to—
Dan Hubbell.
Ben A. Ramaker.

AUGUST 8, 1940.

MR. NAT SINGER,
Soft-Lite Lens Company,
745 Fifth Avenue, New York, N. Y.

DEAR NAT: I promised to wire you today but we have been busy and have spent considerable time discussing the Soft-Lite pricing on the new basis that is under consideration. It is now four o'clock and not much use to wire, consequently this letter, in which we could cover it a little more fully.

Why wouldn't it be a good idea, Nat, rather than simply going to the Duo-Site prices for Ds to figure on a basis of $2.25 per pair over the new White prices? To say this because it would have the same effect in the lower divisions and certainly would be more beneficial in the higher foci and would give us a much better story. We would agree with this procedure as a temporary measure only because we feel that there is too much at stake and too many ramifications on this whole subject to attempt to settle the D price permanently at this time. We think that will be affected when the new price of Kryptoks is established, which certainly cannot be very far off. Just talked to Dan and he said he would talk to you again today, and that whatever we would decide would be agreeable to him.

In the letter and price list that Ramaker sent us, he has listed at the bottom of the sheet $2.00 extra for Soft-Lites and, of course, in the event that is not followed, it should be changed and you, naturally will let him know because I believe they are beginning work on the printing of the list.

I still feel very definitely that we should have this whole Bifocal set-up pretty definitely in our hands as to what is eventually going to happen, and the price schedules and cost to us should be decided before definite selling prices are made. I say that be-

cause I know we are going to have a controversy over the prices you expect to charge us both for regular Kryptok Soft-Lites and Orthogon D Soft-Lites. We are pretty definitely under the impression that it is going to be necessary that we buy Kryptok Soft-Lite blanks at a top price of $2.00 and Orthogon D Soft-Lites at a top price of $3.00. In this controversy we must take into consideration the whole Cruxite set-up. We can argue that Soft-Lites are worth more than Cruxite all we like, but setting
1393 a price that gives us all a nice profit is one thing, yet in order to enjoy that profit we must have sales, and we are certainly anxious to set this whole thing up so that both you and we will increase the Bifocal business.

We again suggest that we get together at the earliest possible time and talk out this whole subject. I am sure that Dan would join us in any meeting that might be arranged and also Ben, if he is not tied up.

Kindest regards.

Yours sincerely,

RIGGS OPTICAL COMPANY.
ROY D. WETMORE.

RDW:NM.
Via—Special Delivery, Air Mail.

1394 *Exhibit 137*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses Greater Comfort—Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

AUGUST 9, 1940.

Mr. ROY D. WETMORE,
Riggs Optical Company,
58 East Washington Street, Chicago, Illinois.

DEAR ROY: Your letter of August 8th arrived this morning, and I am frank to say that it was somewhat of a surprise. After my long talk with you Wednesday night, which was followed by a talk with Dan, it was my understanding that we were all agreed that under the circumstances, as a temporary arrangement, we are to sell Soft-Lite D at the Duo-Site prices.

You did add that whereas you thought it sounded okay, that you might wire me in the morning if you had any different thoughts

subsequently. I waited until 2 o'clock and didn't hear from you. I had occasion to call Dan about that time on another matter and he made no comment regarding the above matter, so I took that as a further indication that everything was set.

At about 3 o'clock I phoned Ben and advised him that we three were in agreement on using the Duo-Site pricings for the Soft-Lite D as a temporary measure. I added that we have to get together—the three of us—to discuss the final pricing on both the D and the Kryptok in Soft-Lite just as soon as the time was ripe. Ben agreed with me that the time would not be ripe until after the new D prices were out.

I appreciate the suggestion in your letter regarding eliminating the $2.00 extra on the white price list. Ben and I discussed this and he definitely said that this was to be crossed out.

As regards the whole bifocal picture, it is my thought that we ought to wait—as I told you on the phone the other night—and that nothing could be done until after the D's were out. I also advised you that when Ray came back this morning that he and I would review the whole matter and prepare an outline which would be sent to you. I am wondering whether this should actually be sent or whether we should hold it up until the end of the month. After Ray and I discuss it he will write you a composite letter giving you our views on the entire situation.

1395 I will be away next week visiting my folks upstate and whereas Ray will be in New England, he will be able to come down to New York any day that is necessary if any urgencies come up. The week after that he is going on his vacation. However, I will be back shortly after he leaves so that we can carry on between us if anything of importance comes up between now and the 26th of August.

With kind regards,

Sincerely,

NAT.

NS:TK.

1396 *Exhibit 138*

AUGUST 15, 1940.

Mr. R. G. LANDIS,
Soft-Lite Lens Company,
745 Fifth Avenue, New York City.

DEAR RAY: In discussing the stock prices for "D" Soft-Lites in New York, we thought it advisable to put the single-pair price for semi-finished at $4.20, the ten-pair price at $3.60, and the distributor's price at $3.00.

In looking over the whole situation, Ray, in setting up these prices for ten's and single's and viewing it from the standpoint of the way white lenses are set up, it would seem that maybe we have them a little high. We would suggest that we set them up at $4.00 for single's, $3.40 for ten's, and $3.00 for distributors. We are just offering this as a suggestion to encourage some of the large dispensing retailers, who have their own shops, to use Orthogon D Soft-Lites.

Needless to say, I enjoyed the day thoroughly spent with you and had a nice trip home. The Stratoliner certainly is the last word.

Hoping to see you soon, and with kindest regards, I remain,

Very truly yours,

RIGGS OPTICAL COMPANY,
ROY D. WETMORE.

R. D. W.: dp.

1397 *Exhibit 139*

cc R. D. Wetmore, A. R. Schrader.

MIDWEST HDQTRS.—R. A. McCLUSKEY

7/25/39.

H. J. FLETCHER, *Denver, Colorado.*

DEAR HERMAN: This will acknowledge your letter regarding Mr. Might, of the Pikes Peak Optical Company, Colorado Springs, Colorado.

If Might will handle the Soft-Lite lenses on an ethical basis following our price list on prescriptions, I see no reason why you should not proceed to sell him a stock of lenses and sign him up as a retail licensee.

The requirements, as you know, Herman, are that a customer must buy one hundred pair of uncut lenses or its equivalent in dollars; that is, if he wants a certain number of rough cylinders. For instance, if he gives you an order for fifty pair of uncut, it would then be necessary for him to buy more than fifty rough cylinders so as to have the equivalent of one hundred pair of uncut lenses.

The retail license is the only thing we can sell him and as far as I know he has never been recognized as a wholesaler. Consequently, he cannot be sold on a wholesale basis. We have been waiting to learn if he was accepted as a wholesaler and, as stated above, so far we don't seem to have any information where he has been accepted.

Under the circumstances, the only way we can look upon his problem is as a retail licensee.

If you think he will handle Soft-Lite lenses on an ethical basis you may proceed to sell him a retail licensee if possible.

With best wishes, I remain

Sincerely yours,

RIGGS OPTICAL COMPANY,
Midwest District Headquarters.
R. A. MCCLUSKEY,
District Manager.

R. A. M./hg.

1398 *Exhibit 140*

CC: R. G. L: For discussion with B. A. Ramaker.

APRIL 18, 1938.

Mr. F. J. KOETH,
c/o Astor Hotel, New York, New York.

DEAR FRED: I attach the data to which I referred this morning outlining the "selling" story which we have been using for many years in regard to the matter of ultra-violet and infra-red absorption of Soft-Lite Lenses. Naturally, this data relates as well to other absorptive lenses, too.

We believe that it is important, in our mutual best interests, that paragraph 3 on page 7 of your Manual for Jobbers' Salesmen, outlining the Ray-Ban proposition be changed to conform with this material.

We would suggest that the copy be changed to refer to the fact that under certain circumstances as, for instance, intense outdoor sunlight, radiation experienced by airplane pilots at the high altitudes in which they work, certain occupations, etc., that ultra-violet and infra-red radiation is present in quantities which may be harmful and that, therefore, Ray-Ban glass has been designed to provide absorption of ultraviolet and infra-red radiation.

Further, we think that a reference to the fact that for regular everyday wear, as distinguished from outdoor or occupational wear, a neutral absorptive, opthalmic glass, with approximately the same ultraviolet and infra-red absorption as white crown glass, provides greater comfort, etc.

In this way, as Nat pointed out this morning, the possibility of the trade being confused as to the relative interests of Bausch & Lomb and the Soft-Lite Lens Company in the sale of absorptive

lenses will be eliminated and such a mention would be mutually desirable in eliminating any question.

With very best regards, I am

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck (encl).

A-71

A true copy from the files of the Soft-Lite Lens Company.

G. DEWEY.

1399 *Exhibit 141*

APRIL 27, 1938.

Mr. B. A. RAMAKER,

Bausch & Lomb Optical Co., Rochester, New York.

DEAR BEN: Although we have just received one set of price lists, bulletins and other material relative to Ray-Ban, I do not find, as yet, upon my return from Canada, any reply to my letter of April 18th to Fred Koeth, of which a copy was sent to you, and the contents of which we discussed a week ago Monday evening when you were in New York.

I find also a couple of reports which bear on this matter which it would seem advisable to pass on to you.

One of our representatives has written quite a long report expressing considerable apprehension as to the reaction of the trade, from the standpoint of Soft-Lite Lenses. Elmer Robinson, who contacted some of the New York trade last week, reports that wholesalers' salesmen are finding that practically every customer they contact on Ray-Ban brings up the question "what's this going to do to Soft-Lite?" and that the salesman finds himself in an embarrassing position because he considers that the suggested answers supplied to cover this question so far are not sufficiently conclusive.

I am passing these two reports on to you because they seem to indicate the importance of getting this phase of the situation, referred to in my letter to Fred, taken care of as soon as possible.

With kindest regards,

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

A true copy from files of Soft-Lite Lens Co.

G. DEWEY.

1400 *Exhibit 142*

BAUSCH & LOMB OPTICAL CO.
ROCHESTER, NEW YORK

JUNE 3, 1938.

Mr. ELMER G. ROBINSON,
Soft-Lite Lens Company,
745 Fifth Avenue, New York City.

DEAR ELMER: I want you and Chris to know that my evening with you at your home was the high light of the New York trip for me, and that I enjoyed every minute. I do hope that you will be able to come and see us in Rochester.

Somehow I question the advisability of putting an article in the optical trade journals on Soft-Lite vs. Ray-Ban. I am afraid that it will raise a question in the minds of some people where no question has existed before. I do not believe that it has occurred to people generally that Calobar could be said to encroach upon Cruxite, and I do not believe that the trade in general looks upon Ray-Ban as a competitor of Soft-Lite. [I am inclined to agree here. N. S.]

I cannot help feeling that the best thing we can do is to continue to sell Soft-Lite for general wear, emphasizing the comfort, the good appearance, and the non-selective absorption that affords just the right amount of relief from over-brightness; and to feature the Ray-Ban as an outdoor proposition for use in bright sunlight. To tie up these two ideas in the same bulletin is to tell the trade that we think that the two fields over-lap, and to cause them to believe that we are trying to draw a distinction where there is little, if any, difference. An article for general release to the optical trade papers could be prepared. Such an article might do some good, but I think that it also might do harm, and frankly I think that the latter is more probable than the former. [Me too. N. S.]

I hope that you will agree with this, but if you do not feel as I do, please do not hesitate to say so. [Answer due by E. R. See R. L. on it. N. S.]

Very truly yours,

BAUSCH & LOMB OPTICAL CO.
SCOTT.

S. Sterling: MC.

A true copy from files of Soft-Lite Lens Co.

G. DEWEY.

-1401

Exhibit 143

SEPTEMBER 8, 1939.

Mr. M. C. WILLIAMSON,
Bausch & Lomb Optical Company,
Rochester, New York.

DEAR MILT: Your letter of September 5th arrived at just the right time for it included a suggestion, regarding the matter under discussion, that was identical to one that was offered by one of the Affiliated company's executives, who sat in at the meeting held here yesterday. In the course of a discussion on ways and means of utilizing to the greatest extent the various advertising and sales aids produced by us and aimed to promote the greater sale of Soft-Lite lenses, this executive pointed out that it would be to our best interests, as well as to theirs and Bausch & Lomb's not to produce promotional items that serve the same purpose.

The Dispenso Box was brought up as an example in point. They felt as we have, and as I explained to you when in Rochester last, that it was a waste of money and effort on our joint parts to produce similar or identical ones. We do believe that it would be to our mutual best interests, therefore, not to duplicate any new promotional efforts or pieces but to coordinate our efforts wherever possible.

It was then that the suggestion was made that, whereas this procedure should be followed in the future, it would be advisable to ask Bausch & Lomb whether or not we couldn't use a similar Dispenso Box along the lines you state you suggested to Elmer when it was first introduced. If that would be satisfactory to you please advise as to just what the procedure should be.

We do appreciate the cooperation you have been giving us in the advertising department for these many years, Milt, but when the Dispenso Box, which was as I pointed out, the 2nd or 3rd duplication of items in the last few years, was introduced we began to receive comments—as I told you at the time of the Affiliate meeting—that such duplications was wasteful and competitive instead of cooperative, I thought it only right that I tell you directly about it. I am very happy that it has worked out as it has and really appreciate the spirit as well as the contents of your fine cooperative letter.

We still suggest that when you come down to New York again that you plan to visit with us so that we can discuss with you our advertising and promotional plans for next year.

Cordially yours,

N. S: T. K.

A true copy from files of Soft-Lite Lens Company.

G. DEWEY.

1402

Exhibit 144

BAUSCH & LOMB OPTICAL COMPANY

ROCHESTER, NEW YORK

SEPTEMBER 13, 1939.

Mr. NAT SINGER,
Soft-Lite Lens Company,
745 Fifth Avenue, New York, N. Y.

DEAR NAT: For the past several years we have been featuring Kleerocite and Kleeno Lens Cleaning Cloths, selling them at a price of $6.50 per thousand and buying them respectively at $6.00 and $5.80 per thousand.

Next year we plan to add a new quality, the Superfine, which is similar to the cloth that you have been using. We can buy it much more advantageously and can either pass along the saving to our customers or make a fairer profit on it ourselves. Possibly we will drop the Kleerocite product, although I am inclined to think we will continue the Kleeno Cloths for political reasons.

Obviously it would be a disadvantage to you if we sold the new cloths at a lower price. Accordingly, we wish you would let us know the price at which you are offering them so that there will be no conflict in this respect. In fact, it would do no harm if you sent me your complete literature on lens cleaning cloths so that we can avoid any prices or terms that might place you at a disadvantage.

Incidentally, we quote the jobber a discount of 10% on most of our advertising, including lens cleaning cloths. This is supposed to be a handling charge to defray some of their bookkeeping expense. I wish you would tell us what discount you quote on your cloths so that we can keep our prices in line. There is the opportunity to pass a better price differential along to the jobber on the Superfine product, but here again I think you will agree that a uniform policy will serve our mutual interest best as it will avoid a competitive angle.

Cordially yours,

BAUSCH & LOMB OPTICAL COMPANY.
MILT. (signed)

M. C. Williamson: E. A. C.

A true copy from files of Soft-Lite Lens Company.

G. DEWEY.

1403 *Exhibit 145*

SEPTEMBER 19, 1939.

Mr. M. C. WILLIAMSON,
Bausch & Lomb Optical Company, Rochester, New York.

DEAR MILT: Upon my return to the office yesterday I found, in accordance with the visit I had in Rochester last Friday, your letters of the 13th and the 15th addressed to Nat, and therefore I am replying to them herewith.

We see no reason why the Soft-Lite Protection Certificate should not be inforporated in the display being made for Dr. Fred C. Maag, Jr., and accordingly enclose 3 samples as requested.

In regard to your tying in the Soft-Lite Protection Certificate with your advertising and promotion work, I remember that Nat said directly after his last visit to the Affiliates Meeting that he made it quite clear that the Soft-Lite Protection Certificate should be coordinated with the other licensed Bausch & Lomb made products wherever it was possible to do so because Soft-Lite, although not a Bausch & Lomb owned product, is a Bausch & Lomb made product. We appreciate your bringing up the matter and hereby grant permission for you to include Soft-Lite wherever it can be possibly done. If there is a question in any specific instance, this can be settled via correspondence.

Your other letter of the 13 refers to the matter of lens cleaner cloths, which we discussed in Rochester. I enclose a listing of our prices to the wholesaler and to the retailer on the various sizes of Soft-Lite cleaner cloths in the various quantities. The price to the wholesaler is less 10%. Soft-Lite cleaner cloths are available in the conventional pink and in blue and pongee colors, and we are also including in the 1940 line a white cloth, for which there seems to be a very limited demand but which will serve the purpose of providing the means of putting a little promotional activity on the Soft-Lite lens cleaner cloths.

From the prices it is obvious that a certain profit accrues to us on the sales of these cloths, and while we are not primarily interested in making a profit on such material it does go towards the promotion expense put on the lens cleaner cloths. We have been maintaining the same price on Soft-Lite lens cleaner cloths that you and AO have been charging so that there would not be any competition on them, and we certainly agree with your feeling that we all should continue selling these cloths at the same price level.

If you would send us the sample of the Dispensó Box which you are expecting from the Pilloid Cabinet Company, of Swan-

1404 ton, Ohio, together with advice as to whether you intend using this box, we could then advise you whether we wish to use the same one and, very likely, make arrangements to place a combination order in order to reduce the unit cost. So far as this item is concerned, we shall await the receipt of the sample and then we can make final arrangements. As discussed, we feel that this is the best way to handle this particular matter.

Insofar as the general subject of the balance of your letter of September 15th is concerned, I think that it will be best to let this rest until you make that intended trip to New York and we can have a 3-cornered talk regarding it, in accordance with our conversation in Rochester. Incidentally, I checked up and found out when we used the first Soft-Lite Protection certificate. It was on July 15, 1932.

At that time, as I recall it, there were no other certificates being used, at least on any extensive basis or as an integral part of a sales promotional program.

I believe, Milt, that the above takes care of the pending matters referred to in your correspondence up to the present time. I shall look forward to hearing from you and also to the pleasure of a visit when you visit New York.

Kindest regards.

Cordially yours,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: T. K.
Encs.
A true copy from files of Soft-Lite Lens Company.

G. DEWEY.

1405 *Exhibit 146*

JANUARY 3, 1940.

Mr. R. G. LANDIS
Soft-Lite Lens Co., Inc.,
426 Fifth Avenue, New York, New York.

DEAR RAY: About ten years ago we manufactured an Orthogon Lens Cabinet containing three drawers with 60 sections in each drawer (six rows of ten sections each). This cabinet had quite a run and when the demand began to dwindle we discontinued it.

Recently there has been some demand for a revival of the old cabinet. Of course, a new addition would be more modern and up to date in its styling. I do not know what the price would be, but it would not be any more than before, which was about

$6.00 and I would try to get it down to three or four, selling it at cost.

Two questions. First, I wish you would let me know about your cabinet and the price at which it sells, as it is not my desire to create a competitive price condition. Secondly, as a result of the cabinet which you put on the market a few years ago, have you any specific suggestions to offer that would help to make ours more valuable or serviceable to the trade.

Of course, if you would like to ride along with us and offer the same cabinet at the same price to your customers as the Soft-Lite promotional device, I do not think our people would have any objection.

The original Orthogon Lens Cabinet was offered at least as far back as 1929, so don't let Nat kid you into believing that we are borrowing an idea from Soft-Lite.

With kind regards and best wishes for the New Year, I am

Cordially yours,

BAUSCH & LOMB OPTICAL CO.

M. C. Williamson: C. S.

1406 *Exhibit 147*

BAUSCH & LOMB OPTICAL COMPANY
TORONTO, CANADA

DECEMBER 14, 1936.

Mr. N. SINGER,
Soft-Lite Lens Co. Inc.,
119 West 57th St., New York City.

DEAR NAT: I am in receipt of a letter under date of December 9th from Ray Landis, informing me that you have postponed your trip to Canada until the first week in January, which will be better for all concerned insomuch as we are working on the 1937 budgets and will be busy with these until the latter part of this month.

As it was definitely decided at the Directors Meeting of Bausch & Lomb Optical Co. Limited in Rochester on Saturday that this company should parallel in Canada AOCo lens prices with Orthogons, we would like your ruling as soon as possible on whether the same extras for Soft-Lite over White will prevail as under the old price list of April, 1935.

In case you are not familiar with the Tillyer prices in Canada we are sending forward a price list on same. You will notice

that the extra for Cruxite is only $.75 over White in Single Vision; the Semi-finished $.50, and Bifocals vary according to the list of extras which you will find included with the price list.

As we wish to distribute a new Uncut Rx price list early in the new year your decision on this matter before January 1st will be helpful to us in preparing this new list. We would also like to know whether you are willing to participate in the cost of this new price list. This new list, of course, would not be as elaborate or as costly as the price list printed in 1935, but would simply be supplementary sheets.

Kind regards to yourself, Ray, and the boys.

Yours very truly,

(Signed) BAUSCH & LOMB OPTICAL CO. LIMITED.

L. E. Amsden: P. C.

1407 *Exhibit 148*

DECEMBER 18, 1936.
Dict. December 17.

BAUSCH & LOMB OPTICAL COMPANY, LTD.,
388 Yonge St., Toronto, Ont., Canada.
Attention Mr. Lionel E. Amsden.

DEAR LIONEL: Your letter of December 14th brings up several questions, that we have been giving considerable attention to. One of these questions, and that is the subject of future costs is one that we have been discussing with our friends in Rochester and have been hoping for favorable answer to for some time.

One of the reasons for our not going to Canada before the first of the year is that we are awaiting this information. Until we have it we cannot decide definitely upon net prices.

It is, however, definitely decided to follow the price set-up and policy, and the ideas behind both, in Canada as we do here in the United States. We have never tied our prices to that of whi[illegible] or in competition with other absorptive lens price schedules excepting in Canada. As you know, our sales have been very disappointing and, confidentially, even though the good work you folks have been doing in Canada in behalf of Soft-Lite has helped considerably, the net result is that we are still showing a loss in our Canadian operations. We follow the U. S. A. plan in England and have shown a profit there within the last two years.

All things considered, what we need is a price set-up independent of other price schedules and policies, and one that will make it profitable, provided sound hard selling and good adver-

tising is done along with it that will result in a substantial volume for all of us in Canada and a profit to us as well as to our distributors, their prescribers and retail users. This is a matter we want to discuss with you when we are in Canada before we determine upon the new price set-up and policy. We are hopeful that we can have the information from Rochester that we have been awaiting—and incidentally, it is their fault that we have not been able to get it.

Before Ray and I come to Toronto the first week in January, you might in the meanwhile, Lionel, discuss the matter with your Toronto associates and perhaps with one or two Canadian Optical Companies which you are close to, so that when we do meet
1408 we can have the benefit of your comments in addition to theirs so as to help guide us in the eventual price set-up and policy that will enable Soft-Lite to enjoy the prosperity in Canada that you folks and we have been so anxious to bring about. When this is done the Soft-Lite Lens Company price list will be prepared and a sufficient quantity of copies available for the entire mailing list of all our Canadian Wholesalers. Until then we would suggest that the present prices be continued in any printing or reprinting of prices.

Ray joins me in sending kindest regards. Will you extend our Season's Greetings as well to the members of your organization and to your good self.

Cordially yours,

SOFT-LITE LENS COMPANY, INC.

H. Singer: A. S.

1409 *Exhibit 149*

SOFT-LITE LENS COMPANY, INCORPORATED
119 West 57th Street
NEW YORK CITY

JANUARY 13, 1932.

Mr. A. D. HURST,
Continental Optical Company,
1402 North Capitol Ave.,
Indianapolis, Indiana.

DEAR AL: Just received some price lists from non-Soft-Lite wholesalers that would indicate their using Soft-Lite Ultex of the inferior quality as part of their regular line. For example, the Buck-eye State Optical Company price list of May 15, 1931, carries in ink the comment "Soft-Lite—$2.00 extra" on the Contor

column which is, I believe, your inferior quality Ultex in the white.

It also carries the comment that Contors are not furnished in the Viopake color which by innuendo is not favorable to Soft-Lite. I notice that they also have Viopake and Velvet-Lite available in the regular Ultex. Do you make these latter, or in fact, are you making any lenses either in Ultex or in single vision of any absorptive or, as you might term it, tinted glass, in any other than genuine Soft-Lite and your old "absorptive" or Crookes shade glass?

You will recall your assurance to me in Chicago that you would definitely and immediately discontinue experimental work and, of course, any possible use of glass of an imitative hue to Soft-Lite for either single vision or bifocals. Has this been done?

Would appreciate your advising me in an early mail and sending a copy to me % the Palmer House, Chicago, where I expect to be early next week.

With kind regards, I am

Yours very truly,

SOFT-LITE LENS COMPANY, INC.,
NAT.

N. S.: D. R.

1410 *Exhibit 150*

JANUARY 16, 1932.

Mr. NAT SINGER,
Soft-Lite Lens Company, Inc.,
119 West 57th Street, New York, New York.

DEAR NAT: Your letter raising the question regarding the sale of Soft-Lite Ultex, Twinsight quality, rather surprises me as you gave me definitely to understand that it would be O. K. for us to do this as long as we did not sell any of the B. & L. jobbers. Although the B. & L. jobbers would naturally be the best outlet for this, we have strictly adhered to your desires.

I am also rather surprised that you seem to doubt my word regarding our manufacturing any other colored lenses than Soft-Lite. I definitely told you in Chicago what we have done in experimenting with an imitation Soft-Lite and also told you at that time that we would definitely not put one out. You may rest assured, Nat, that means we will not put one out unless I otherwise advise you.

We are making Viopake single vision corrected curve lenses for Harris in New York. These they are not distributing but are using only in their own stores. I believe the American Optical Company manufacture their Centex Viopake which they distribute.

We have taken on quite a number of customers for our new corrected single vision, and if you would care to have us manufacture this for you in Soft-Lite for you to distribute I will be glad to talk with you regarding it at any time. However, we would not consider manufacturing our single vision in Soft-Lite for us to distribute unless the proportionate cost of the glass to the sale of the blanks is considerably less than it is in Ultex.

Let me say again that I am very much disappointed that you seem to have doubted my veracity. Perhaps your experience with others in the industry has caused you to have this lack of confidence. I am sure you have never had reason to doubt me.

With kindest personal regards,

Sincerely,

CONTINENTAL OPTICAL COMPANY,
A. D. HURST.

LI.
CC mailed to Mr. Singer, Palmer House, Chicago.
CC D. F. Taylor.

1411 *Exhibit 151*

12/12/34.

In discussion between NS, BAR, and RGL, it was decided that the Soft-Lite Lens Company, as such, could not ask the Panoptik Company for a copy of their contract with the American Optical Company nor for that portion which refers to manufacture and sale of tinted Panoptiks by the American Optical Company. BAR said that he did not know the exact wording but that there was a reference to the fact that tinted Panoptiks sold by the American Optical Company must be sold on the same price level as that existing on Panoptik Soft-Lite but there was nothing in the contract which would prevent the American Optical Company from making and selling Panoptiks in Cruxite AX. NS said that as a Director of the Panoptik Company he had the right to ask for a copy of the contract, and then he laughingly asked Ben when the next Directors Meeting of the Panoptik Company would occur. Ben remarked that he did not know, and in fact had never attended one. The matter was left in this way. Later in talking with A. D. Buedingen he advised that so far as he knew the only

provision on this matter was that the American Optical Company would have to take the matter up with the Panoptik Company in the event they wished to sell a tinted Panoptik blank. That this is how the matter stood. If this is true, then there is still an opportunity to make a provision of some kind against the manufacture and sale of Panoptiks in Cruxite AX. Try to find this out definitely from BAR.

R. G. L.

A true copy from the files of the Soft-Lite Lens Company.
G. DEWEY.

1412 *Exhibit 152*

JUNE 19TH, 1939.

CLARE BARNES, O. D.,
345 Central Avenue, Dunkirk, New York.

DEAR MR. BARNES: The Soft-Lite sales policy was designed to serve and protect effectively the interests of Soft-Lite Licensees.

Naturally the acceptance of a license obligates the Licensee to use a reasonable percentage of Soft-Lite lenses. All Soft-Lite Licensees receive the advantages of the Soft-Lite National Educational Publicity Campaign as well as many other advertising and sales aids. So it is only fair to those Licensees who support the Soft-Lite policies that they should be the recipients of the good-will which they and the Soft-Lite Lens Company engender.

In the rare instances where a Licensee does not observe his obligations to promote the use of Soft-Lite Lenses, it becomes necessary to make other arrangements for the distribution of this quality product.

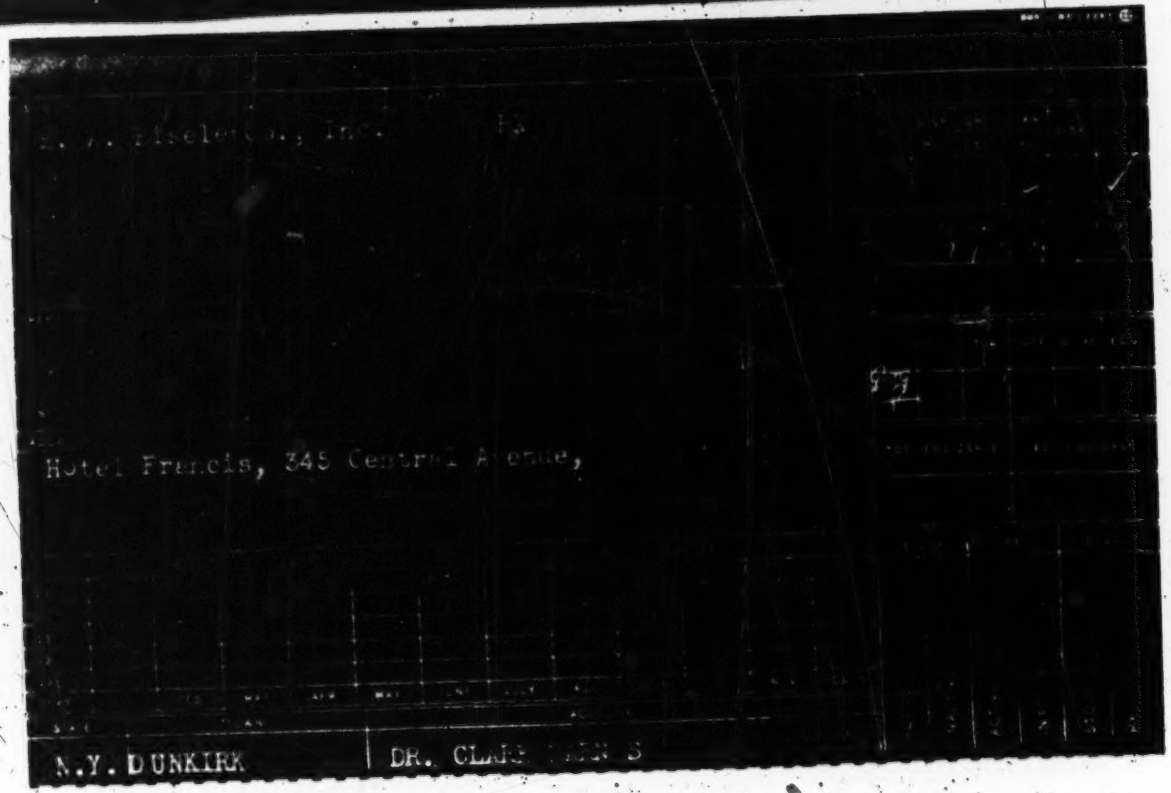
Therefore, upon the recommendation of our representatives in the territory in which you are located, we must ask you to please take notice that, pursuant to License Agreement entered into by you with the undersigned, we hereby elect to terminate the License as of July 17th, 1939.

Our records show that you were issued a Soft-Lite Identification Plaque #7154. We should appreciate your returning this to us together with any Soft-Lite advertising of promotional material which you may have.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.,

R. G. Landis : me.


Hotel Francis, 345 Central Avenue,
N.Y. DUNKIRK

1415 *Exhibit 154*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses—Greater Comfort—Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

JULY 17, 1939.

DEAR RAY:

The 6/28/39 letter from Clare Barnes of Dunkirk is "*Something.*"

The facts are as follows: I called on him just before the State Convention—after first calling on Fish (in Dunkirk) and Ellsworth in Fredonia. They didn't know he was on our list, & made some very disparaging statements about him, his character, & his methods.

When I entered his office he was busy refracting, but he came out & I gave him my card, stating since he was busy he probably would not have time to see me. He wanted to know what I wanted—I asked him how much Soft-Lite Lenses sold for in Dunkirk. He said "Any price." Then I asked whether there was not some specific amount which was charged. At once he became extremely abusive, saying, "Damn you, don't you understand English?" I told him I did ordinarily, but, frankly, I did not understand his answer. Thereupon he opened his screen door, picked up my brief case & threw it out into the hall, saying,

"Get out, & don't ever come in here again."

1416 Before I could recover my astonishment he grabbed me by my wrists & started to push me out of the door, saying "I'll break every damn bone in your hand." Well, I broke away from him & he made a pass at me, knocking off my glasses—which broke. I'll admit, I was doggone angry by that time, so I walloped him. We had a battle for about 5 minutes. He was marred up a bit.

I did say to him that I was sorry for the whole thing—(but not on his account)—but in principle.

When I returned to Rochester I saw my attorney. He said I have a case, in that Barnes struck me with glasses on, etc. I decided to do nothing about it.

If Barnes wants to be fool enough to "follow thru," I'm willing personally.

I don't understand his reference to "conduct—in various business places throughout Western N. Y., & especially Buffalo." I'd suggest you write him asking about this. I'd also like to know.

Sincerely,

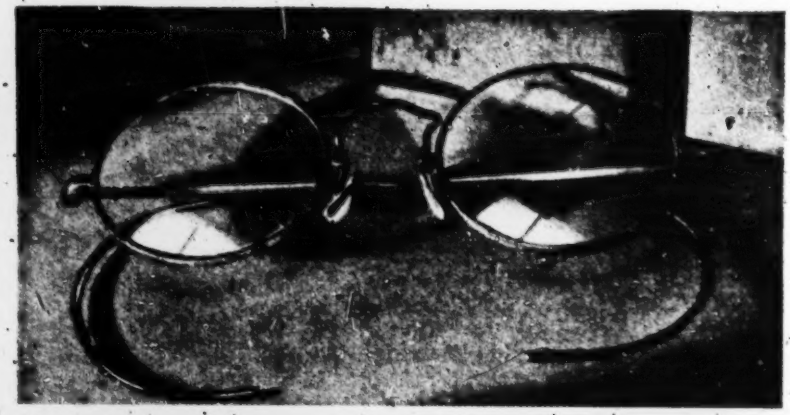
GEO.

1418 *Exhibit 155*

BARNETT & RAMEL OPTICAL COMPANY

KANSAS CITY, MISSOURI—JOPLIN, MISSOURI

Prescription and Stock Catalogue

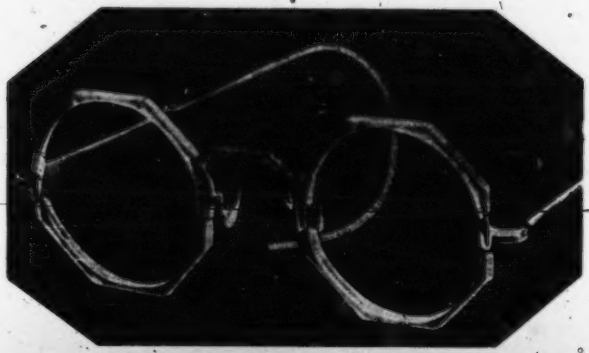


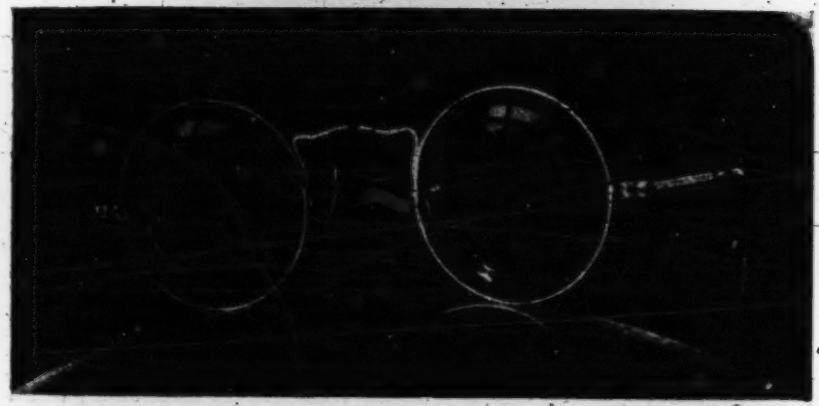




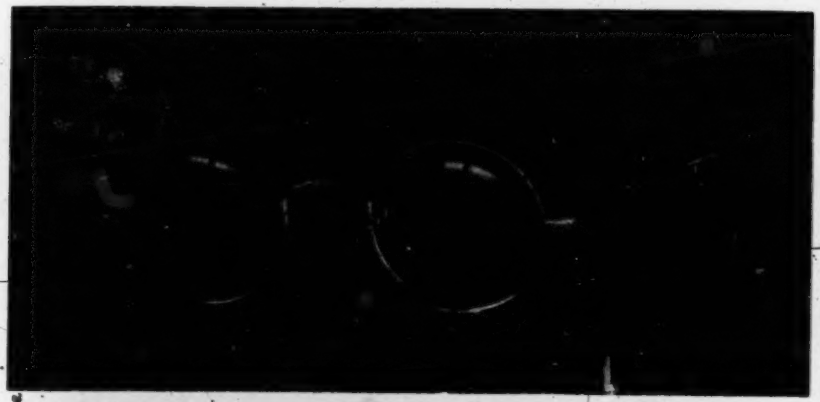














1514 *Exhibit 156*

APRIL 17, 1937.

Mr. NAT SINGER,
Soft-Lite Lens Co., Inc.,
119 West 57th Street, New York City.

DEAR NAT: You have asked, on numerous occasions, the question as to what protection the Soft-Lite Lens Company has in view of Panoptik license arrangement with A. O. Co. on the question of Cruxite Panoptik prices in relation to Soft-Lite Panoptiks. A. O. Co. license from Panoptik Company, as well as our license from Panoptik Company, states very definitely that prices on Panoptiks (in any form or color) are to be established by the Panoptik Company.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. Ramaker: K.

1515 *Exhibit 157*

SOFT-LITE LENS CO., INC.
Like Cathedral Windows, Soft-Lites Soften the Light
Squibb Building
NEW YORK CITY

APRIL 19, 1937.

BAUSCH & LOMB OPTICAL COMPANY,
Rochester, New York.

Attention: Mr. B. A. Ramaker

DEAR BEN: Your letter of April 17th is appreciated. However, it does not fully cover the situation as it was discussed in the Directors' Room early in January.

The letter was to confirm in writing what was our understanding from the very beginning—that any Panoptik bifocal in a tinted glass was not to sell for less than Soft-Lite Panoptik bifocals.

Your letter, with a sentence added covering this point, as agreed, will take care of the matter satisfactorily.

With kind regards, I remain

Sincerely,

SOFT-LITE LENS COMPANY, INC.
NAT SINGER.

N. Singer: A. S

1516 *Exhibit 158*

APRIL 27, 1937.

Mr. NAT SINGER,
Soft-Lite Lens Co., Inc., New York City.

DEAR NAT: Referring to your letter of the 20th. The limitations of the contract do not permit us to make the statement you ask for. On the other hand, it would seem that our letter of the 17th covers the situation actually because of the complexion of the Directorate of the Panoptik Company.

In any event, you have won the point you made at the time we had the session here in January—namely, that where your interests are concerned, we will talk to you first rather than afterward.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. Ramaker: K.

1517 *Exhibit 159*

MAY 24, 1937.

Mr. N. SINGER,
Soft-Lite Lens Company, Inc.,
119 West 57th Street, New York City, New York.

DEAR NAT: In spite of the fact that since receipt of your letter of April 19th we have spent a very considerable amount of time in further study of the problem arising from your desire for further protection for the Soft-Lite Lens Company in view of the Panoptik license arrangement with A. O. Co., we are sorry to have to report that we still do not see how we can add anything to our letter of April 17, 1937. The Panoptik Company, Inc., controls the patents under which all Panoptik lenses are made (in any form or color), and that Company establishes the prices at which lenses are made and sold under Panoptik patents. While we may not properly speak for Panoptik Company, Inc., it seems to us that Panoptik Company, Inc., would necessarily give every consideration to uniformity in prices for lenses in color established for its manufacturing licensees in the same manner it does for white lenses, and for its self-interest would take no action favoring one licensee over another.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. Ramaker: B.

1518 *Exhibit 160*

SOFT-LITE LENS CO., INC.
Like Cathedral Windows, Soft-Lites Soften the Light
119 West 57th Street,
NEW YORK CITY

MAY 27TH, 1937.

BAUSCH & LOMB OPTICAL CO.,
Rochester, N. Y.

Attention Mr. B. A. Ramaker.

DEAR BEN: It is important that we have on file a statement covering one of the several considerations involved when the Soft-Lite Lens Company and I retired from the Panoptik Company as stockholders, and also when I resigned as Director. One of these related to your undertaking to see to it that if the Panoptik Company should at any time make or sell, or issue a license to make or sell, any other tinted (absorptive) Panoptik bifocal blanks and lenses that it would do so only on the condition that the prices at which such blanks or lenses were to be sold would be no less than the established prices on the Panoptik Soft-Lite bifocal blanks and lenses.

This understanding is mutual between your group and ours, as was evidenced at the conference I attended in Rochester on January 4th, as you will recall. Briefly, what we have been seeking is a written confirmation of this understanding so that we may have it on record. We assume from your letter that the Panoptik Company, for obvious business reasons, will not discriminate among its Licensees on tinted lenses and that you yourself have made this position clear to the Panoptik Company.

Accordingly, then, having on file your letter of May 24th and the correspondence on the same subject that preceded it, we have the necessary confirmation, and therefore, under the circumstances, we are going to consider the matter as having been properly cared for.

Many thanks to you for your cooperation in the above.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
NAT.

N. Singer/s

1519 *Exhibit 161*

BAUSCH & LOMB OPTICAL CO.

Established 1853

ROCHESTER, NEW YORK

SEPTEMBER 12, 1939.

Mr. NAT SINGER,
Soft-Lite Lens Co. Inc., New York City.

DEAR NAT: I had a note with me last week (but didn't use it) to ask you why the Soft-Lite Lens Company were taking issue with Ray Farnham on the question as to whether or not A. O. Co. were within their rights in supplying Cruxite in Panoptik.. I thought this question was answered several years ago when we told you that the original contract required A. O. Co. to submit samples of Panoptik in Cruxite to us for approval, before actually producing, and, secondly, we control the price structure thereof.

I understand also that in connection with this same inquiry, you raised a question as to what our plans were in regard to the Ray-Ban Panoptik. True enough, I heard also that Ray has made the statement out among the trade that B & L would probably come out with a Ray-Ban Panoptik; in fact, the truth of the matter is that we have now successfully completed our experimental work on it. However, we have not set up any policy or price structure on it, nor have we taken any appreciable production in work. In any event, let's plan to dispose of these two questions; ourselves, the next time we are together.

Incidentally, will you tell me—or have Ray write me—definitely whether or not you sell the Blue Grass Optical Company as wholesalers? My impression is that you do and that we should do likewise. We have been having a little discussion with Wildy on this question and would like to have your confirmation.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
BEN.

B. A. Ramaker: K.

Reply should be addressed to the company, attention of the writer.

1520 *Exhibit 162*

BAUSCH & LOMB OPTICAL CO.
Established 1853
ROCHESTER, NEW YORK

OCTOBER 18, 1939.

Mr. N. SINGER,
Soft-Lite Lens Co. Inc., New York City.

DEAR NAT: I have just heard from Carl Bausch about the Cruxite Panoptik situation. He told me that, according to the contract, the sample approval and price approval procedure reverts back to the Panoptik Company, in consequence of which, he is notifying Gordon to have the matter checked up.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. Ramaker: k.

A true copy from the files of Soft-Lite Lens Company.
G. DEWEY.

1521 *Exhibit 163*

AGREEMENT

This Agreement made and entered into by and between Bausch and Lomb Optical Company, a corporation of New York having its principal place of business at Rochester, New York, hereinafter termed the Licensor and Titmus Optical Company, Incorporated, a corporation of Virginia having its principal place of business at Petersburg, Virginia, hereinafter termed the Licensee, witnesseth that

Whereas, the Licensor is the owner, saving and excepting existing licenses thereunder, of the entire right, title and interest in and to the following United States and Canadian letters patent:

United States Patent Reissue No. 16,541 Bifocal Lens, T. B. Drescher, February 8, 1927; Canadian patent No. 247,112, Bifocal Lens, T. B. Drescher, February 24, 1925; United States Patent No. 1,513,923, Glass and Composition Therefore, R. J. Montgomery, November 4, 1924; United States Patent No. 1,765,287, Optical Glass, M. R. Scott, June 17, 1930; and in and to the inventions disclosed in and covered thereby, and

Whereas, the Licensee is desirous of acquiring a right and license, but not the exclusive right and license, to make, use and sell fused multifocal ophthalmic lenses and lens blanks embodying one or more of said inventions.

Now, therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, each to the other in hand paid, receipt of which is hereby acknowledged,

and in consideration of the mutual covenants herein contained, the parties hereto have covenanted and agreed as follows:

1. The Licensor hereby grants to the Licensee, during the life of said Patent Reissue No. 16,541 which expires on April 8, 1941 or until otherwise terminated as hereinafter provided, a nonexclusive right and license to make, use and sell fused multifocal ophthalmic lenses and lens blanks embodying one or more of said inventions.

1522 2. The Licensee hereby covenants and agrees to pay to the Licensor a royalty of ten cents (10¢) for each pair of said fused multifocal ophthalmic lenses and/or lens blanks, embodying one or more of said inventions, which it sells. Said lenses and/or lens blanks shall be considered as sold when they have been billed out, or if not billed out, then when delivered, shipped, or mailed, or when paid for, if paid for before delivery, shipping or mailing.

3. It is understood and agreed that a fused multifocal ophthalmic lens and/or lens blank embodies the invention of said U. S. Patent Reissue No. 16,541 if the reciprocal relative dispersions (ν value) of the component parts of the lens, having different refractive indices, differ by an amount which is less than twenty-five per cent (25%) of the reciprocal relative dispersion (ν value) of the glass of the major portion. Lenses and lens blanks of the fused multifocal type in which the nu (ν) values of the component parts differ by an amount which is twenty-five per cent. (25%) or more of that of the glass of the major portion are deemed to be outside the scope of said U. S. Patent Reissue No. 16,541.

4. The Licensee hereby covenants and agrees that it will sell said fused multifocal ophthalmic lenses and lens blanks embodying or made in accordance with the inventions covered by any of said patent rights at prices not less than, and on terms of sale no more favorable than, those prescribed by the Licensor to the wholesale trade, provided, however, that the Licensor will not prescribe said minimum prices in excess of the lowest prices at which the Licensor or any other licensee under said patents, or any of them, sells corresponding lenses and lens blanks; and provided further that the prices and terms prescribed by the Licensor to the wholesale trade shall include the prices and terms at which the patented lenses and/or lens blanks are sold to the wholesale trade by the Soft-Lite Lens Co., Inc., of New York City but not the prices and terms at which the Licensor sells such patented lenses and/or lens blanks to said Soft-Lite Lens Co. Inc., and the prices at which said products are sold by said Soft-Lite Lens Co. Inc., shall be treated, for the purposes of this agreement, as prices of sale by a licensee under said patents.

1523 By "corresponding" as used herein is meant those lenses and lens blanks having substantially the same forms of segments and embodying or made in accordance with the invention covered by any of said patents. Minimum prices and most favorable terms as prescribed by the Licensor are set forth in Schedule I attached hereto and made a part hereof. The Licensor reserves the right at any time and from time to time to change said Schedule, or any part thereof, and any new or changed Schedule shall, thirty (30) days after the Licensor gives the Licensee notice in writing of such change in price and/or terms, be substituted for and replace the previously established Schedule and become a part of this license agreement as fully as if the same had been originally attached thereto. The Licensee covenants and agrees that in its sales hereunder it will conform in all respects to the terms of said Schedule I, or of such Schedule or Schedules as may be substituted therefor, pursuant to the terms hereof (subject to the above proviso), and that it will not attempt to evade the same by the grant of any rebates, by placing goods on consignment, by selling other goods to purchasers of the lens blanks and/or lenses made hereunder at lower than its regular price for such other goods, or by any other device or expedient; and the violation of any of the provisions of this paragraph shall give the Licensor the right, at its option, to cancel and terminate this license upon fifteen (15) days written notice to the Licensee.

5. The Licensee hereby admits the validity of said patents, and each of them, and agrees not to contest the same or aid or encourage others in contesting the same, or be a party, directly or indirectly, to any procedure disputing the validity or tending to impair the value of any or all of said inventions and/or patents. This restriction, however, is not to apply after the termination or cancellation of this agreement unless such termination or cancellation is the result of default or other violation by Licensee.

6. The Licensee agrees to place upon all packages, containers, or cartons, in which said licensed lenses and/or lens blanks are sold or distributed, or upon all tags or labels applied to said licensed lenses and/or lens blanks, notice of said Reissue Patent No. 16,541 and Canadian Patent No. 247,112 in the form and manner prescribed by law.

1524 7. The Licensee agrees to keep separate, accurate and complete records showing the total number of said fused multifocal ophthalmic lenses and lens blanks embodying one or more of said inventions sold by it, all such records to be open to the inspection of the Licensor, or its duly authorized representatives, at reasonable times during business hours. The Licensee further agrees that it will render and deliver to the Licensor within fifteen (15) days after and as of the first days of Janu-

ary, April, July, and October of each year during the term of this agreement, a full and accurate written statement, under oath, of the total number of said fused multifocal ophthalmic lenses and lens blanks sold by it during the preceding three calendar months. The royalty procided for by paragraph numbered 3 hereof shall be due and payable on the 15th day of January, April, July, and October of each year upon all of said lenses and lense blanks sold during the preceding quarter.

8. It is understood and agreed that all of said fused multifocal ophthalmic lenses and/or lens blanks, which the Licensee sells under the terms of this agreement, shall be produced only by fusing, grinding, polishing, and other operations within the boundaries of the United States of America, provided, however, that the Licensee may import from other countries rough glass pressings or pieces to be used in the manufacture of said fused multifocal ophthalmic lenses and/or lens blanks.

9. Upon the failure of the Licensee at any time during the existence of this agreement to keep or perform any agreement, obligation, term, or condition of this license on the part of the Licensee to be kept or performed hereunder, except as otherwise provided herein, it is understood and agreed that should the Licensee refuse or neglect to comply with the provisions of this license for a period of thirty (30) days after notification from the Licensor, sent by registered mail to the last known place of business of the Licensee, of the Licensee's failure in any of these respects, this license shall cease and terminate at the option of the Licensor thirty (30) days after notice in
1525 writing by registered mail of such termination has been forwarded to the Licensee, but no such termination shall release the Licensee from any of the liabilities accruing to the Licensor hereunder prior to the time such termination becomes effective. No failure on the part of the Licensor to exercise its right of termination hereunder for any one or more defaults or breaches of covenant shall be construed to prejudice its right of termination for any subsequent default or breach of covenant.

10. If the Licensee should be adjudged a bankrupt or make an assignment for the benefit of creditors, then and in either of said events this license shall be automatically terminated. Should said Licensee become insolvent or go into the hands of a receiver, then and in either of said events the Licensor may cancel and terminate this license by giving the Licensee sixty (60) days' written notice, sent to the Licensee by registered mail to the last known place of business of the Licensee. It is also understood that such termination shall not release the Licensee from any of the liabilities accruing to the Licensor hereunder prior to the time such termination becomes effective.

11. The License herein granted shall be personal to the Licensee, and its successors in business, and shall not be assignable or transferable by agreement, operation of law, or otherwise, without the written consent of the Licensor.

12. None of the terms of this license shall be held to be waived or altered, unless such waiver or alteration is in writing, signed by the Licensor.

13. The Licensor agrees that in the event any other party shall infringe the patents under which this license is granted, to such an extent as to substantially lessen the protection to the Licensee thereby afforded, the Licensor, following written notice to it of such infringement, shall promptly take and vigorously prosecute such reasonable steps, as may be advised by competent counsel, to terminate such infringement. If, in any suit for infringement of said letters patent, any claim of any of said patents shall be held invalid or restricted in scope, by any decision of any court from which no appeal is or can be taken, the Licensee shall thereafter be relieved of the obligation and restrictions of this agreement to the extent of such decision, but not to lenses and/or lens
1526 blanks falling within any claim of any of said patents not held invalid or falling within any claim as so restricted in scope.

14. The license herein granted shall not be construed to grant or imply any right or license to the Licensee to use the Licensor's trade mark "NOKROME" or any other trade mark of the Licensor. It is further agreed that the Licensee shall not, in any case, employ the same or substantally the same trade marks for designating the lenses and/or lens blanks sold under this license and also lenses and/or lens blanks not sold under this license, it being the intent of this provision that different and distinctive trade marks shall be employed by the Licensee to distinguish between lenses and/or lens blanks sold under this license agreement and those not sold under it. It is understood that the Licensee shall have the right to designate the patented lenses and blanks which it sells under this license as "Bonvue Color-Free Bifocal Lenses."

In witness whereof, the parties have hereunto set their hands and seals this 26th day of January 1940.

BAUSCH & LOMB OPTICAL COMPANY,
By: M. H. EISENHART, *Its President.*
TITMUS OPTICAL COMPANY, INCORPORATED,
By: E. H. TITMUS, *Its President.*

Attest:

E. H. TITMUS, JR.,
Secretary, Titmus Optical Co., Inc.

1527 STATE OF NEW YORK,
County of Monroe, ss:

On this 8th day of February 1940, before me, a Notary Public in and for Monroe County, personally came M. H. Eisenhart, to me known and known to me to be the person who executed the above instrument, and who, being by me duly sworn, says that he is a resident of Rochester, New York; that he is the President of Bausch & Lomb Optical Company, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed thereto is such corporate seal and was affixed thereto by order of the Board of Directors of said corporation, and that he executed the above instrument as President of said corporation by like order.

MARGARET B. ROTH,
Notary Public.

STATE OF VIRGINIA,
City of Petersburg, ss:

On this 26th day of January 1940, before me, a Notary Public in and for said City of Petersburg, personally came E. H. Titmus, to me known and known to me to be the person who executed the above instrument, and who, being by me duly sworn, says that he is a resident of the City of Petersburg; that he is the President of Titmus Optical Company, Incorporated, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed thereto is such corporate seal and was affixed thereto by order of the Board of Directors of said corporation, and that he executed the above instrument as President of said corporation by like order.

H. W. SYNDER,
Notary Public.

My commission expires on the 11th day of February 1942.

1528 SCHEDULE I

Net Minimum Prices to Wholesale Trade

	Pair net
Lenses similar to Bausch & Lomb Optical Orthogon D, Semifinished White	$2.40
Lenses similar to Bausch & Lomb Regular Nokrome, Semifinished White	$2.40
Lenses similar to Bausch & Lomb Ful-Vue, Semifinished White	$3.00
Extra for color $1.00 pair net	
Extra for blanks 6½ and 7 mm thick	$0.67
Extra for blanks thicker than 7 mm	1.33
Extra for blanks larger than regular	1.00
Extra for blanks with segment fused on inner curve	0.67

1529 *Exhibit 164*

ROCHESTER, NEW YORK,
November 17, 1937.

BAUSCH & LOMB OPTICAL CO.,
Rochester, New York.

GENTLEMEN: In connection with the execution today of a license agreement between your company and the Shuron Optical Co., under your "Nokrome" group of patents, it is further agreed, as a part of said agreement, that the prices and terms to be prescribed by your company to the wholesale trade, as referred to in paragraph 5 of said agreement, shall include the prices and terms at which the patented lens and/or lens blanks are sold to the wholesale trade by the Soft-Lite Lens Co., Inc., of New York City, but not the prices and terms at which your company sells such products to said Soft-Lite Lens Co., Inc., and the prices at which said products are sold by said Soft-Lite Lens Co., Inc., shall be treated, for the purposes of this agreement, as prices of sale by a licensee under said patents as referred to in said paragraph.

Very truly yours,

SHURON OPTICAL COMPANY, INC.,
By JOHN W. COLLINSON, *President.*

1531 *Exhibit 166*

DISTRIBUTORS' PRICE LIST

Registered Protection 9200005 Certificate, Soft-Lite Lenses

April 1, 1941

SOFT-LITE LENS COMPANY

Squibb Building, 745 Fifth Ave., New York

SOFT-LITE LENSES

Schedule 1

Issued Pursuant to Soft-Lite Lens Company—Manufacturer-Distributor Fair Trade Act Contracts

The sale of Soft-Lite Lenses and Blanks herein listed is controlled under Manufacturer-Distributor Fair Trade Act Contracts effective in all States in which Fair Trade Acts are in force.

Introductory

This price list supersedes all former lists and supplements.

Terms and Prices.

All prices herein listed are net and are not subject to trade discounts beyond the usual 2% cash discount.

Guarantee

Soft-Lite Lenses are guaranteed to conform to established first quality lens standards and to be free from defects in material and workmanship.

Soft-Lite Glass and Soft-Lite Lenses are manufactured exclusively for the Soft-Lite Lens Company by the Bausch & Lomb Optical Company to the universally acceptable high standards of Bausch & Lomb Quality.

Acceptance of Orders

The prices herein are subject to change without notice and to addition or increase for applicable taxes, excises or other charges imposed by any governmental authority with respect to the articles listed herein or to the sale, use or consumption thereof.

Minimum Sale of Stock Lenses

Uncut Stock Lenses not listed as "Foci Carried in Stock" will be billed at the stock price plus 15¢ per pair net. The minimum stock sale of uncut lenses to Distributors shall be two pairs of lenses of identical description, regardless of quantities or assortments purchased.

1532 SINGLE VISION UNCUT

	Price per pair	
	Certified series	Orthogon series
Spheres, + or − [1]		
0.12 to 2.00	$1.20	$1.30
2.25 to 4.00	1.35	1.55
4.25 to 6.00	1.45	1.65
6.25 to 8.00	1.60	1.80
Plano Cyl., + only [1]		
0.12 to 2.00	1.40	1.60
2.25 to 3.00	1.45	1.65
3.25 to 4.00	1.55	1.75
Sphero cyl., + ○ + [1]		
0.12 to 2.00:		
0.12 to 2.00	1.40	1.60
2.25 to 3.00	1.45	1.65
2.25 to 4.00:		
0.12 to 2.00	1.45	1.65
2.25 to 3.00	1.50	1.70
4.25 to 6.00:		
0.12 to 2.00	1.75	1.95
2.25 to 3.00	1.80	2.00
Sphero cyl., − ○ + [1]		
0.12 to 2.00:		
0.12 to 2.00	1.50	1.70
2.25 to 3.00	1.55	1.75
3.25 to 4.00	1.65	1.85
2.25 to 4.00:		
0.12 to 2.00	1.55	1.75
2.25 to 3.00	1.60	1.80
3.25 to 4.00	1.70	1.95
4.25 to 6.00:		
0.12 to 2.00	1.85	2.05
2.25 to 3.00	1.90	2.10
3.25 to 4.00	2.00	2.20
Plano uncut: [1]		
6.00 Curve:		
50 mm	1.20	----------
57 mm	1.40	----------
63 mm	1.70	----------
71 mm	2.00	----------
80 mm	2.40	----------

All above items controlled under Fair Trade Acts.

SINGLE VISION SEMIFINISHED

	Price per pair
ORTHOGON SERIES	
Spheres, Groups—A to M [1]	$1.40
Cylinders, Groups—A, B, C, D, E, F, H, J, K: [1]	
0.12 to 2.00	1.50
2.25 to 3.00	1.60
3.25 to 4.00	1.70
4.25 to 6.00	1.80
Cylinders, Groups—G, L, M: [1]	
0.12 to 2.00	1.60
2.25 to 3.00	1.70
3.25 to 4.00	1.80
4.25 to 6.00	1.90
CERTIFIED SERIES [1]	
Spheres, + or − 6.00 B. C.	
3 mm	1.10
4 mm	1.20
5 mm	1.30
6 mm	1.40
Cylinders, + 6.00 B. C.: [1]	
3 mm:	
0.12 to 2.00	1.30
2.25 to 3.00	1.40
3.25 to 4.00	1.50
4.25 to 6.00	1.60
4 mm:	
0.12 to 2.00	1.40
2.25 to 3.00	1.50
3.25 to 4.00	1.65
4.25 to 6.00	1.70
6 mm:	
0.12 to 2.00	1.50
2.25 to 3.00	1.60
3.25 to 4.00	1.70
4.25 to 6.00	1.80
Cylinders, + 9.00 B. C. [1]	
4 mm:	
0.12 to 2.00	1.40
2.25 to 3.00	1.50
3.25 to 4.00	1.60
4.25 to 6.00	1.70

+7.50 B. C. in 4 mm only available at prices of +6.00 B. C. 4 mm.
All above items controlled under Fair Trade Acts.

1533

SOFT-LITE MOLDED BLANKS

Flat or +6.00 Base Curve—Available in All Shades

	Price per pair
50 mm round:	
4 mm thick	$0.95
6 mm thick	1.05
8 mm thick	1.19
10 mm thick	1.33
12 mm thick	1.47
57 mm round:	
4 mm thick	1.20
6 mm thick	1.30
8 mm thick	1.44
63 mm round:	
4 mm thick	1.40
6 mm thick	1.50
8 mm thick	1.64
71 mm round:	
4 mm thick	1.60
6 mm thick	1.70
8 mm thick	1.84
80 mm round:	
4 mm thick	1.80
6 mm thick	1.90
8 mm thick	2.04

SOFT-LITE THIN-LITE MOLDED BLANKS

Flat or +6.00 Base Curve—Available in No. 1 Shade Only

	Price per pair
50 mm round:	
4 mm thick	$2.25
6 mm thick	2.50
8 mm thick	2.75
10 mm thick	3.00
Soft-lite laminex blanks	3.00
Soft-lite ful-vue bifocal blanks	4.35

All above items controlled under Fair Trade Acts.

1537 *Exhibit 168*

PRESCRIPTION PRICE LIST

Registered Protection 9200005 Certificate—Soft-Lite Lenses

April 1, 1941

SOFT-LITE LENS COMPANY

Squibb Building, 745 Fifth Ave., New York

1539 No other absorptive lens offers this combination of features which help to assure patient satisfaction and an increased clientele.

Bausch & Lomb Quality: There is only one quality Soft-Lite, made from sand to finished lens by Bausch & Lomb, America's most precise optical institution.

Neutral Absorption: Soft-Lite tones down the light uniformly throughout the spectrum (just as does white crown glass). It is a strictly *nonselective* filter—a neutral absorptive lens.

Complete Lens Line: Soft-Lite Lenses are available in all popular single vision and bifocal forms and in four degrees of absorption (No. 1 Shade, 14.6%; No. 2 Shade, 18%; No. 3 Shade, 29.5%, and No. 4 Shade, 46.4%).

True Color Perception: Because the light transmission is similar to that of white crown glass, color values as seen through Soft-Lite Lenses remain unchanged.

Better Appearance: Soft-Lite Lenses are the most inconspicuous of all spectacle lenses. No edge glitter * * * no internal reflections. Soft-Lite Lenses have a very definite cosmetic advantage which appeals to men and women alike.

Tenacity of Tint: There is never any difficulty in matching Soft-Lite Lenses. All four densities are consistently the same pleasing flesh tones and retain them indefinitely.

Protective Sales Policy: The Soft-Lite Protection Certificate identifies the genuine. Soft-Lite Lenses are only available through licensed ethical sources.

Nationally Known: Through consistent ethical advertising in leading magazines, Soft-Lites have become known as the world's standard for neutral absorptive lenses. Patients recognize and appreciate their performance and appearance advantages.

Business Building Materials: Only Soft-Lite, among absorptive lenses, offers such a complete constructive program for increasing clientele.

1540 ORTHOGON SERIES—SINGLE VISION

	Price per pair		
	Edged bevel or rimless	Drilled or inserted	Rimless mounted
Spheres, + or −:			
Plano to 2.00	$3.20	$3.40	$3.75
2.25 to 4.00	3.45	3.65	4.00
4.25 to 6.00	3.70	3.90	4.25
Plano cylinders, + only:			
0.12 to 2.00	3.45	3.70	4.05
2.25 to 3.00	3.70	3.95	4.30
3.25 to 4.00	3.95	4.20	4.55
Sphero cylinders + ◇ +:			
0.12 to 2.00 sph.:			
0.12 to 2.00 cyl	3.45	3.70	4.05
2.25 to 3.00 cyl	3.70	3.95	4.30
3.25 to 4.00 cyl	3.95	4.20	4.55
2.25 to 4.00 sph.:			
0.12 to 2.00 cyl	3.85	4.10	4.45
2.25 to 3.00 cyl	4.10	4.35	4.70
3.25 to 4.00 cyl	4.35	4.60	4.95
4.25 to 6.00 sph.:			
0.12 to 2.00 cyl	4.35	4.60	4.95
2.25 to 3.00 cyl	4.60	4.85	5.20
3.25 to 4.00 cyl	4.85	5.10	5.45

For − ◇ + sphero cylinders add 25c per pair to + ◇ + prices.
For uncuts, deduct 25c per pair from edged prices.

	Per pair
Add to above:	
For cylinders:	
4.25 to 6.00 D, add to price of 4.00 D cylinder	$ .50
6.25 to 8.00 D, add to price of 4.00 D cylinder	1.50
For spheres:	
4.25 to 6.00 D, add to price of 4.00 D sphere	.50
Above 6.00 D sphere, add to price of 4.00 D sphere	1.50
For polished edges	.25
For purchasing edges, new or old lenses	.75
For mounting lenticular, beaded field	2.00
For mounting lenticular, oval field	4.00
For prism on cylinder or sphere cylinder:	
4.50 to 5.50	1.50
6.00 to 7.00	2.00
7.50 to 10.00	2.50
For prism on sphere:	
4.50 to 5.50	1.00
6.00 to 7.00	1.50
7.50 to 10.00	2.00
For perimetric, orbal, octagon, drop octagon, or other special shapes	.50
For drop oval, bevel edge, except regular Ful-Vue frames	.25
For shaping and fitting frame to octagon, orbal, or other special shapes	.50

1541 CERTIFIED SERIES—SINGLE VISION

	Price per pair		
	Edged bevel or rimless	Drilled or inserted	Rimless mounted
Spheres, + or −: [1]			
Plano to 2.00	$2.85	$3.05	$3.40
2.25 to 4.00	3.10	3.30	3.65
4.25 to 6.00	3.35	3.55	3.90
Plano cylinders + only: [1]			
0.12 to 2.00	3.10	3.35	3.70
2.25 to 3.00	3.35	3.60	3.95
3.25 to 4.00	3.60	3.85	4.20
Sphero cylinders, + ◇ +: [1]			
0.12 to 2.00 sph.:			
0.12 to 2.00 cyl	3.10	3.35	3.70
2.25 to 3.00 cyl	3.35	3.60	3.95
3.25 to 4.00 cyl	3.60	3.85	4.20
2.25 to 4.00 sph.:			
0.12 to 2.00 cyl	3.50	3.75	4.10
2.25 to 3.00 cyl	3.75	4.00	4.35
3.25 to 4.00 cyl	4.00	4.25	4.60
4.25 to 6.00 sph.:			
0.12 to 2.00 cyl	4.00	4.25	4.60
2.25 to 3.00 cyl	4.25	4.50	4.85
3.25 to 4.00 cyl	4.50	4.75	5.10

For − ◇ + sphero cylinders add 25c per pair to + ◇ + prices.
For uncuts, deduct 25c per pair from edged prices.

	Per pair
[1] Add to above:	
For cylinders:	
4.25 to 6.00 D, add to price of 4.00 D cylinder	$ .50
6.25 to 9.00 D, add to price of 4.00 D cylinder	1.50
For spheres:	
6.25 to 9.00 D, add to price of 6.00 D sphere	.50
Above 9.00 D sphere, add to price of 6.00 D sphere	1.50
For polished edges	.25
For perifusing edges, new or old lenses	.75
For concave lenticular, round field	2.00
For concave lenticular, oval field	4.00
For prism on cylinder or sphere cylinder:	
0.50 to 3.50	1.50
4.00 to 7.00	2.00
7.50 to 10.00	2.50
For prism on sphere:	
0.50 to 3.50	1.00
4.00 to 7.00	1.50
7.50 to 10.00	2.00
For perimetric, orbal, octagon, drop octagon, or other special shapes	.50
For drop oval, bevel edge, except regular Ful-Vue frames	.25
For shaping and fitting frame to octagon, orbal, or other special shapes	.50

1542

SOFT-LITE MYO-DISC

(Concave Lenticular with Plano Margin)

Single Vision

	Price per pair
	Edged, mounted or inserted
Spheres, Minus	
6.25 to 9.00	9.50
9.25 to 12.00	10.50
12.25 to 16.00	11.50
16.25 to 20.00	12.50
20.25 to 30.00	13.50
Sphero Cylinders — ○ —	
6.25 to 9.00 Sph.:	
0.12 to 2.00 Cyl.	11.50
2.25 to 3.00 Cyl.	12.00
3.25 to 4.00 Cyl.	12.50
4.25 to 6.00 Cyl.	13.00
9.25 to 12.00 Sph.:	
0.12 to 2.00 Cyl.	12.50
2.25 to 3.00 Cyl.	13.00
3.25 to 4.00 Cyl.	13.50
4.25 to 6.00 Cyl.	14.00
12.25 to 16.00 Sph.:	
0.12 to 2.00 Cyl.	13.50
2.25 to 3.00 Cyl.	14.00
3.25 to 4.00 Cyl.	14.50
4.25 to 6.00 Cyl.	15.00
16.25 to 20.00 Sph.:	
0.12 to 2.00 Cyl.	14.50
2.25 to 3.00 Cyl.	15.00
3.25 to 4.00 Cyl.	15.50
4.25 to 6.00 Cyl.	16.00
20.25 to 30.00 Sph.:	
0.12 to 2.00 Cyl.	15.50
2.25 to 3.00 Cyl.	16.00
3.25 to 4.00 Cyl.	16.50
4.25 to 6.00 Cyl.	17.00

For Uncut Lenses, deduct 50c per pair from above prices.

Sphere Openings on Single Vision Myo-Disc Lenses:

6.25 to 9.00 D:20 mm
8.00 to 16.00 D:25 mm
14.00 to 20.00 D:22 mm
18.00 to 30.00 D:20 mm

Specify size of opening desired

1543 SOFT-LITE THIN-LITE

	Spherical Dex or Dec	Plano or spherical cylinder
4.00 to 6.00	$6.00	$7.50
6.25 to 10.00	6.50	8.00
10.25 to 13.00	7.50	9.00
13.25 to 16.00	8.50	10.00
16.50 to 20.00	9.50	11.00
20.50 to 25.00	11.50	13.00

No extra charge for + ⊃ − or − ⊃ +

EXTRAS FOR THIN-LITE PRESCRIPTION LENSES

Odd shades, excepting Octagon, Lenticular, and other special requirements will be charged a prevailing extra prescription charges for such special work.

For Octagon shape, add	$.75
For Toric form, add	1.50

Dex or Dec forms are preferable, and smaller sizes are recommended. Torics are not recommended in foci above 8D.

SOFT-LITE LAMINEX LENSES

Single Vision

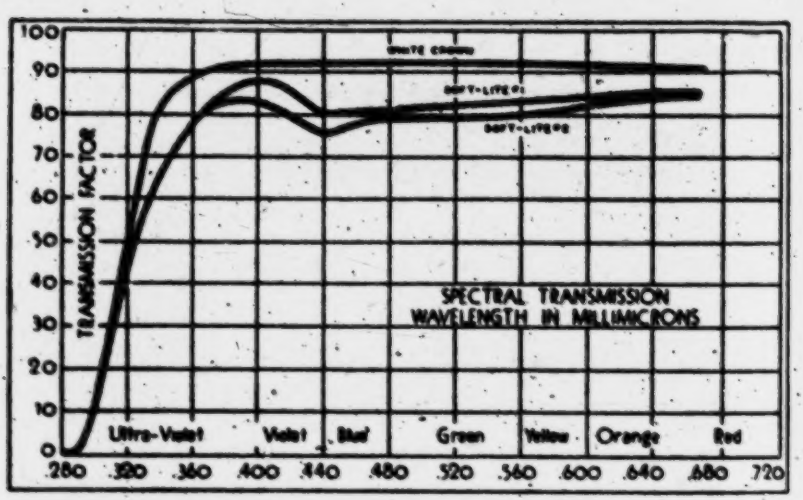
	Price per pair	
	Edged, bevel or rimless	Drilled, mounted or inserted
Spheres:		
Plano to 3.00	$7.25	$7.50
3.25 to 6.00	8.25	8.50
6.25 to 10.00	9.75	10.00
Cylinders		
0.12 to 3.00	7.50	7.75
3.25 to 6.00	8.50	8.75
Compounds		
0.12 to 3.00 S ⊃ 0.12 to 3.00 C	7.50	7.75
3.25 to 6.00 S ⊃ 3.25 to 6.00 C	8.50	8.75

For Uncut Lenses, deduct 50c per pair.
Usual extra charges for special shapes.
For combinations other than those listed above, request quotation.

1544 Soft-Lite—The modern lens for modern living and lighting conditions

Living and lighting conditions have changed in the last thirty years. Levels of illumination are higher. The subsequent glare and reflections are brighter. And eyes are used more than ever before. That is why the proper degree of neutral absorption to be provided each patient has become an important element in every

prescription. This may be determined by a simple procedure known as The Light Tolerance Test, which identifies those patients who need more than the 8% neutral absorption of white crown glass—requiring the added neutral absorption of Soft-Lite No. 1 (14.6%) or Soft-Lite No. 2 (18%) for comfort and satisfaction.



Transmission Chart shows three degrees of neutral absorption which may be prescribed for modern living conditions.

The Light Tolerance Test helps to correct the eyes of today for the needs of today.

1544–A *Exhibit 169*

PRICE LIST TO SOFT-LITE STOCK LICENSEES—SOFT-LITE LENSES

August 26, 1940

SOFT-LITE LENS COMPANY, INC.

Squibb Building, 745 Fifth Avenue, New York

1544–B SOFT-LITE LENSES

Schedule 1

Issued Pursuant to Soft-Lite Lens Company Manufacturer-Distributor Fair Trade Act Contracts

The sale of Soft-Lite Lenses and Blanks herein listed is controlled under Manufacturer-Distributor Fair Trade Act Contracts effective in all States in which Fair Trade Acts are in force.

The Minimum Prices specified for the products herein listed apply to all sales thereof by Distributors to Retailers in all such States, irrespective of whether or not either party to the transaction has signed a Fair Trade Act Contract, and are binding upon the seller and the buyer of such products.

The Minimum Prices herein set forth, at which these Soft-Lite Lenses and Blanks may be sold by Distributors to Retailers, are an integral part of the Manufacturer-Distributor Fair Trade Act Contracts. A copy of this Price Schedule should be filed with such contracts.

Introductory

This price list supersedes all former lists and supplements. It is effective January 2, 1940.

Terms and Prices

All prices herein listed are net and are not subject to trade discounts beyond the usual 2% cash discount. No cash discount is allowed west of the Rocky Mountains.

The minimum resale prices at which Soft-Lite Lenses and Blanks may be sold by wholesale distributors to the retail optical trade are controlled under Manufacturer-Distributor Fair Trade Act Contracts in all States in which Fair Trade Acts are in force. This price schedule is an integral part of these Manufacturer-Distributor Fair Trade Act Contracts, and is binding both upon the buyer and the seller of the Soft-Lite Lenses and Blanks listed herein, irrespective of whether either party to the transaction has signed such a contract.

Guarantee

Soft-Lite Lenses are guaranteed to conform to established first quality lens standards and to be free from defects in material and workmanship.

Soft-Lite Glass and Soft-Lite Lenses are manufactured exclusively for the Soft-Lite Lens Company by the Bausch & Lomb Optical Company to the universally acceptable high standards of Bausch & Lomb Quality.

Acceptance of Orders

The prices herein are subject to change without notice and to addition or increase for applicable taxes, excises, or other charges imposed by any governmental authority with respect to the articles listed herein or to the sale, use, or consumption thereof.

1544–C MINIMUM SALE OF STOCK LENSES

(To Stock Licensees only)

The Minimum Sale of Uncut Stock Lenses from Distributor to Retailer in quantities of less than five pairs assorted shall be two pairs of identical description. Any order for less than this quantity must be billed from the Single Pair Uncut Stock Price List. (See pages 13 and 14.)

Sales of Uncut Stock Lenses in quantities of five pairs or more assorted may be made by Distributors to Retailers in quantities of not less than one pair of identical description, and must be billed according to the column headings in which purchased.

The above requirement applies to sales of Uncut Stock Lenses within the range of Stock Foci, whether or not these are listed as "Foci Carried in Stock." Uncut Stock Lenses not listed as "Foci Carried in Stock" will be billed at the stock price plus 25c per pair net from Distributor to Retailer.

Semi-finished lenses and molded blanks may be purchased in any quantity, and must be billed according to the column headings in which purchased.

DEFINITION OF COLUMN HEADINGS

"2 Pairs of a Kind or 5 Pairs Assorted" means 2 pairs of lenses of identical description or 5 pairs of lenses of one type, of the same or assorted foci and shade. Quantities of 5 pairs or more of the same type can be made up in assortments of not less than one paid of identical description. Quantities of less than 5 pairs of the same type must be made up in assortments of not less than 2 pairs of identical description.

"10, 25, and 50 Pairs Assorted" means 10, 25, and 50 pairs respectively of lenses of one type, of the same or assorted foci and shade, with not less than one pair of any one description included within any assortment.

"Assorted" in this connection means lenses of one type assorted as to focus and shade.

Following is a list of the types of Soft-Lite Lenses:

Orthogon Soft-Lite Single Vision Uncut Lenses.
Orthogon Soft-Lite Single Vision Semi-Finished Lenses.
Certified Single Vision Uncut Lenses.
Certified Single Vision Semi-Finished Lenses.
Molded Blanks.
Panoptik Soft-Lite Bifocals.

Orthogon Soft-Lite Bifocals, Styles A, AA, B, C, and D.
Ultex Soft-Lite Bifocals, Styles A, E, B, and L.
Duo-Site Semi-Finished Bifocal Blanks.
Duo-Site Rough Bifocal Blanks.

An "assortment" may include, for example, spheres, cylinders, and sphero cylinders in Soft-Lite and in Orthogon or Balcor White Lenses. Uncut and semi-finished lenses cannot be included in the same assortment. Duo-Site and Ultex semi-finished bifocals cannot be included in the same assortment; but Orthogon Soft-Lite semi-finished bifocals, A, AA, B, C, and D, may be included in the same assortment.

1544–D Exchange of Customers' Lenses

The exchange of customers' lenses for lenses of other foci or other specifications must not be permitted as a means of evading the minimum prices specified for quantities purchased in one order. In those cases where the exchange of customers' lenses is necessary, a charge for such exchange of not less than 25c per pair, or half pair, shall be made.

A pair of lenses consists of two lenses of identical focus and description. The exchange of two single lenses of different foci or description shall be regarded as the exchange of two individual half pairs of lenses, and the exchange charge of 25c shall apply to each.

When customers' lenses are to be exchanged for lenses of the same or lower focus division, the minimum charge for such exchange shall be 25c per pair or half pair.

When customers' lenses are to be exchanged for lenses of more expensive type or of higher focus division, the charge for such exchange shall be the difference between the first net column price of the lenses desired, and the first net column price of the lenses returned, plus 25c per pair or half pair.

Lenses not listed as regular Stock Foci are not subject to exchange.

Lenses outside the range of Stock Foci must be billed at prescription prices.

Shipment and Billing of Quantity Assortments

The net prices given under the various Net Column Headings in the Stock Lens Price List are the minimum resale prices specified for quantities purchased in one individual order. Accumulating of orders for, or deliveries of, smaller quantities of lenses must not be permitted as a means of evading the minimum prices specified for quantities purchased in one order.

If the Distributor is unable to fill a customer's order for an assortment of Stock Lenses completely in one shipment, partial delivery of such order may be made, and the balance "back-ordered" for prompt delivery. When an order for a stock quantity has been placed and stocks are not sufficient to permit filling the order in one shipment, orders for ten or twenty-five pairs assorted must be filled in not more than two shipments, and orders for fifty pairs assorted must be filled in not more than three shipments. The complete order must be billed at the time of original shipment. All deliveries on any individual order must be completed within 30 days from date of first shipment.

1544–E ORTHOGON SERIES SINGLE VISION UNCUT

	Price per pair			
	2 pairs of a kind or 5 pairs assorted	10 pairs assorted	25 pairs assorted	50 pairs assorted
SPHERES, + or − [1]				
Plano to 2.00	$2.35	$2.10	$1.90	$1.80
2.25 to 4.00	2.45	2.20	2.00	1.90
4.25 to 6.00	2.60	2.35	2.15	2.05
6.25 to 8.00	2.75	2.50	2.30	2.20
PLANO CYL., + only [1]				
0.12 to 2.00	2.50	2.25	2.00	1.90
2.25 to 3.00	2.60	2.35	2.10	2.00
3.25 to 4.00	2.75	2.50	2.25	2.15
SPHERO CYL., + ⊂ + [1]				
0.12 to 2.00:				
0.12 to 2.00	2.50	2.25	2.00	1.90
2.25 to 3.00	2.60	2.35	2.10	2.00
2.25 to 4.00:				
0.12 to 2.00	2.60	2.35	2.10	2.00
2.25 to 3.00	2.75	2.50	2.25	2.15
4.25 to 6.00:				
0.12 to 2.00	2.95	2.75	2.45	2.35
2.25 to 3.00	3.15	2.90	2.65	2.55
SPHERO CYL., − ⊂ + [1]				
0.12 to 2.00:				
0.12 to 2.00	2.65	2.40	2.15	2.05
2.25 to 3.00	2.75	2.50	2.25	2.15
3.25 to 4.00	2.95	2.70	2.45	2.35
2.25 to 4.00:				
0.12 to 2.00	2.75	2.50	2.25	2.15
2.25 to 3.00	2.90	2.65	2.40	2.30
3.25 to 4.00	3.05	2.80	2.55	2.45
4.25 to 6.00:				
0.12 to 2.00	3.05	2.90	2.55	2.45
2.25 to 3.00	3.20	2.95	2.70	2.60
3.25 to 4.00	3.35	3.15	2.85	2.75

[1] Notes:
For edged lenses, 5 pairs or more, bevel or rimless, of identical size and shape, add 20c per pair to uncut prices.
For drilled lenses, 5 pairs or more of identical size and shape, add to rimless edge prices: 2 holes per pair, 10c; 4 holes per pair, 20c.
All above items controlled under Fair Trade Acts.

1544–F CERTIFIED SERIES SINGLE VISION UNCUT

	Price per pair			
	2 pairs of a kind or 5 pairs assorted	10 pairs assorted	25 pairs assorted	50 pairs assorted
Spheres, + or −[1]				
0.12 to 2.00	$1.95	$1.75	$1.55	$1.45
2.25 to 4.00	2.05	1.85	1.65	1.55
4.25 to 6.00	2.20	2.00	1.80	1.70
6.25 to 8.00	2.35	2.15	1.95	1.85
Plano cyl., + only [1]				
0.12 to 2.00	2.10	1.90	1.65	1.55
2.25 to 3.00	2.20	2.00	1.75	1.65
3.25 to 4.00	2.35	2.15	1.90	1.80
Sphero cyl., + ○ +[1]				
0.12 to 2.00 / 0.12 to 2.00	2.10	1.90	1.65	1.55
0.12 to 2.00 / 2.25 to 3.00	2.20	2.00	1.75	1.65
2.25 to 4.00 / 0.12 to 2.00	2.20	2.10	1.80	1.70
2.25 to 4.00 / 2.25 to 3.00	2.35	2.25	1.95	1.85
4.25 to 6.00 / 0.12 to 2.00	2.55	2.45	2.10	2.00
4.25 to 6.00 / 2.25 to 3.00	2.70	2.60	2.25	2.15
Sphero Cyl., − ○ +[1]				
0.12 to 2.00:				
0.12 to 2.00	2.25	2.05	1.80	1.70
2.25 to 3.00	2.35	2.15	1.90	1.80
3.25 to 4.00	2.55	2.35	2.10	2.00
2.25 to 4.00:				
0.12 to 2.00	2.35	2.25	1.90	1.80
2.25 to 3.00	2.50	2.40	2.05	1.95
3.25 to 4.00	2.65	2.55	2.20	2.10
4.25 to 6.00:				
0.12 to 2.00	2.65	2.55	2.20	2.10
2.25 to 3.00	2.80	2.70	2.35	2.25
3.25 to 4.00	2.95	2.85	2.50	2.40
Plano uncut: [1]				
6.00 curve:				
50 mm	1.85	1.75	1.55	1.35
57 mm	2.40	2.20	1.95	1.70
63 mm	2.95	2.70	2.35	2.00
71 mm	3.55	3.30	2.90	2.50
80 mm	4.15	3.90	3.45	3.00

[1]Notes

For edged lenses, 5 pairs or more, bevel or rimless, of identical size and shape, add 20 c per pair to uncut prices.

For drilled lenses, 5 pairs or more of identical size and shape, add to rimless edge prices: 2 holes per pair, 10c; 4 holes per pair, 20c.

All above items controlled under Fair Trade Acts.

1544–G ORTHOGON SERIES SINGLE VISION SEMIFINISHED

	Price per pair			
	Less than 10 pairs	10 pairs assorted	25 pairs assorted	50 pairs assorted
Spheres, groups [1] A to M	$2.00	$1.80	$1.65	$1.55
Cylinders, groups [1] A, B, C, D, E, F, H, J, K:				
0.12 to 2.00	2.15	1.95	1.80	1.70
2.25 to 3.00	2.25	2.05	1.90	1.80
3.25 to 4.00	2.35	2.15	2.00	1.90
4.25 to 6.00	2.45	2.25	2.10	2.00
Cylinders, groups [1] G, L, M:				
0.12 to 2.00	2.35	2.10	1.95	1.85
2.25 to 3.00	2.45	2.20	2.05	1.95
3.25 to 4.00	2.55	2.30	2.15	2.05
4.25 to 6.00	2.65	2.40	2.25	2.15

CERTIFIED SERIES SINGLE VISION SEMI-FINISHED

Spheres, + or − 6.00 B. C. [1]				
3 mm	$1.60	$1.45	$1.35	$1.25
4 mm	1.75	1.60	1.50	1.40
6 mm	2.05	1.90	1.80	1.70
Cylinders, + 6.00 B. C. [1]				
3 mm:				
0.12 to 2.00	1.95	1.75	1.60	1.45
2.25 to 3.00	2.05	1.85	1.70	1.55
3.25 to 4.00	2.15	1.95	1.80	1.65
4.25 to 6.00	2.25	2.05	1.90	1.75
4 mm:				
0.12 to 2.00	2.10	1.90	1.75	1.60
2.25 to 3.00	2.20	2.00	1.85	1.70
3.25 to 4.00	2.30	2.10	1.95	1.80
4.25 to 6.00	2.40	2.20	2.05	1.90
6 mm:				
0.12 to 2.00	2.25	2.05	1.90	1.75
2.25 to 3.00	2.35	2.15	2.00	1.85
3.25 to 4.00	2.45	2.25	2.10	1.95
4.25 to 6.00	2.55	2.35	2.20	2.05
Cylinders, + 9.00 B. C. [1]				
4 mm:				
0.12 to 2.00	2.85	2.55	2.35	2.15
2.25 to 3.00	2.95	2.65	2.45	2.25
3.25 to 4.00	3.05	2.75	2.55	2.35
4.25 to 6.00	3.15	2.85	2.65	2.45

+ 7.50 B. C. in 4 mm only available at prices of + 6.00 B. C. 4 mm

All above items controlled under Fair Trade Acts.

1544–H

SOFT-LITE MOLDED BLANKS

Flat or 6.00 Base Curve—Available in All Shades

	Price per pair
50 mm round:	
4 mm thick	$1.20
6 mm thick	1.40
8 mm thick	1.60
10 mm thick	1.80
57 mm round:	
4 mm thick	1.60
6 mm thick	1.80
8 mm thick	2.00
63 mm round:	
4 mm thick	1.85
6 mm thick	2.05
8 mm thick	2.25
71 mm round:	
4 mm thick	2.10
6 mm thick	2.30
8 mm thick	2.50
80 mm round:	
4 mm thick	2.45
6 mm thick	2.65
8 mm thick	2.85

50 mm round: 6.00 B.C. 4 mm are available in No. 2, No. 3 and No. 4 shades only.

SOFT-LITE THIN-LITE MOLDED BLANKS

Flat or 6.00 Base Curve—Available in No. 1 Shade Only

	Price per pair
50 mm round:	
4 mm thick	$3.10
6 mm thick	3.40
8 mm thick	3.70
10 mm thick	4.00

SOFT-LITE LAMINEX BLANKS

Semifinished	$4.00

All above items controlled under Fair Trade Acts.

1545 PANOPTIK BIFOCALS

Rough and Semifinished—Available in 1, 2, and 3 Shades

	Price per pair	
	To "A" licensees	To "AA" licensees
Regular Style Panoptiks—54 mm round, A, B, C, D, E, F, K: [1]		
Semifinished	$6.56	$5.84
Rough	5.43	4.84
AX, BX, CX, 52 x 57 mm size X, Y, Z, 54 mm round: [1]		
Semifinished	7.31	6.50
Rough	6.18	5.50
Pr. Panoptiks, 54 mm round: [1]		
Semifinished	8.81	7.84
Rough	7.68	6.84
Ps. Panoptiks, 54 mm round: [1]		
Semifinished	10.31	9.17
Rough	9.18	8.17
Panoptik Cataract Bifocal, Fused Lenticular, any power: [1]		
Semifinished	13.12	11.67
Rough	10.87	9.67
ADD TO ABOVE: [1]		
For Minus Segment	2.63	2.33
For Two Segments on same blank	3.00	2.67
For Trifocal	2.63	2.33
For blanks larger than regular up to 63 mm diameter	.75	.67

ORTHOGON SERIES BIFOCALS

Semifinished

	Price per pair	
	Less than 10 pairs	10 pairs or more assorted
One-piece Construction—Available in all shades: [1]		
Style "A" Segment size 38 x 19 mm	$6.00	$5.00
Style "AA" Segment size 38 x 30 mm	6.70	5.70
Style "B" Segment size 22 mm round	6.35	5.35
Fused Nokrome Construction—Available in 1, 2, and 3 shades: [1]		
Style "C" Segment size 16 mm round	4.00	3.40
Style "D" Segment size 20 mm round	4.00	3.40

	Per pair
[1] Add to above, For Styles "A," "AA" and "B":	
For Prism on Reading Portion, base in or base out, 3.50 △ or less	$3.50
For Prism on Reading Portion, base in or base out, stronger than 3.50 △	4.50
For Prism on Reading Portion, base up, base down, or base oblique, 3.50 △ or less	6.50
For Prism on Reading Portion, base up, base down, or base oblique, stronger than 3.50 △	7.50
For Reading Addition stronger than 4.50 D	1.50

All above items controlled under Fair Trade Acts.

1546 SEMIFINISHED SOFT-LITE BIFOCAL BLANKS

One Piece Construction Available in All Shades

	Price per pair	
	Less than 10 pairs	10 pairs or more assorted
Style "A" Segment (28 x 19 mm) [1]	$5.75	$4.75
Style "E" Segment (16 x 30 mm) [1]	5.75	4.75
Style "B" Segment (22 mm round) [1]	6.10	5.10

Add to above, per pair	Per pair
For Prism on Reading Portion, base in or base out, 3.50 △ or less	$3.50
For Prism on Reading Portion, base in or base out, stronger than 3.50 △	4.50
For Prism on Reading Portion, base up, base down, or base oblique, 3.50 △ or less	6.50
For Prism on Reading Portion, base up, base down, or base oblique, stronger than 3.50 △	7.50
For Reading Portion stronger than 4.50 D addition	1.50
For Plano base up to 4.50 D addition	4.50
For Plano base stronger than 4.50 D addition	5.50
For Blanks over 6 mm thick and less than 9 mm thick	2.00
For Blanks 9 mm thick or over	3.00
For Bi-Convex form, Double Regular Price.	
For special base curves (A or E style)	1.00
For special base curves (B or L style)	2.00
For Biconcave form	3.00
For plano addition	1.00
For minus addition	3.50
For flint construction	3.00

DUO-SITE

Available in all shades

	Less than 10 pairs	10 pairs or more assorted
Rough [1]	$3.75	$3.00
Semifinished [1]	4.50	3.75

[1] Add to above, per pair	Per pair
For 30-mm rough segment	$1.00
For 35 mm rough segment	1.00
For Blanks 6½ and 7 mm thick	1.00
For Blanks thicker than 7 mm	2.00
For Toric Blanks with segment fused on inner curve	1.00
For Blanks larger than regular size	1.50
For plus or minus curve stronger than 4.00 D on flat blanks	1.00
For semifinished with addition stronger than 4.50 up to 6.00 D	1.50

All above items controlled under Fair Trade Acts.

1547 SEMIFINISHED BIFOCALS IN STOCK

LENS FOCI CARRIED IN STOCK

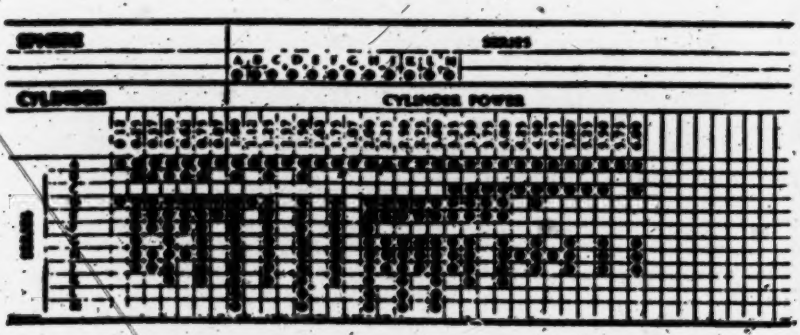
From an economic standpoint it would be obviously impractical to stock a full range of foci in all styles of lenses. However, direct contact with the profession and trade and with our own sales records over a several year period are excellent criteria for indicating the correct and practical foci to carry in stock.

An extra charge of 25c per pair above the price listed in the column in which stock lenses are purchased will be made from Distributor to Retailer for lenses that fall within the stock range but are not listed as stock foci in the following charts. The same extra charge applies to semifinished and rough bifocal blanks not indicated as stock numbers.

Foci outside the stock ranges will be supplied at prescription prices.

ORTHOGON SERIES SEMIFINISHED SINGLE VISION LENSES IN STOCK

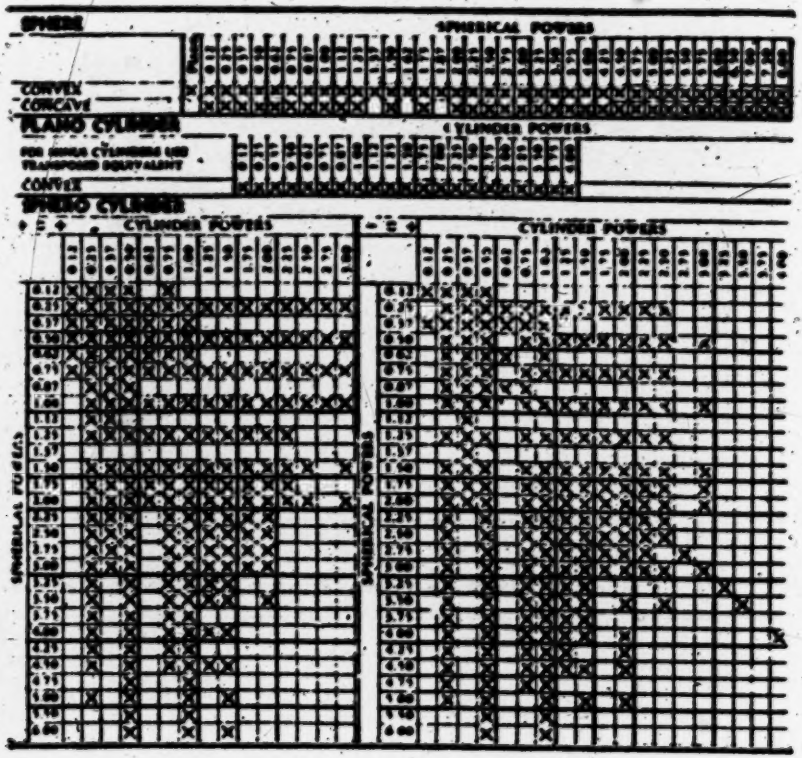
1, 2, and 3 Shades



1548 LENS STOCK FOCI LIST—ORTHOGON AND CERTIFIED SERIES

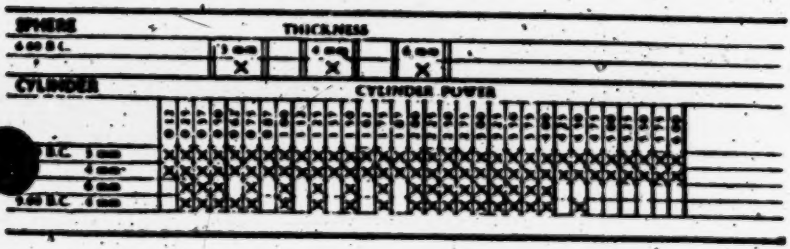
Adopted by the Optical Manufacturers Association October 8, 1937—Effective November 1, 1937

Single Vision Uncut—1 and 2 Shades



CERTIFIED SERIES SEMIFINISHED

All Shades



1549 ORTHOGON SERIES SINGLE VISION SINGLE PAIR UNCUT

	Price per pair	
	Uncut	Uncut
Spheres, + or −		
Plano to 2.00		$2.55
2.25 to 4.00		2.70
4.25 to 6.00		2.85
6.25 to 8.00		3.30
Plano Cylinders, + only		
For Minus Cylinders use Transposed Equivalent:		
0.12 to 2.00 Cyl		2.95
2.25 to 3.00 Cyl		3.15
3.25 to 4.00 Cyl		3.35
Sphero Cylinders:	+ ◇ +	− ◇ +
0.12 to 2.00 Sph. ◇		
0.12 to 2.00 Cyl	$2.95	$3.15
2.25 to 3.00 Cyl	3.15	3.40
3.25 to 4.00 Cyl		3.65
2.25 to 4.00 Sph. ◇		
0.12 to 2.00 Cyl	3.35	3.65
2.25 to 3.00 Cyl	3.55	3.90
3.25 to 4.00 Cyl		4.15
4.25 to 6.00 Sph. ◇		
0.12 to 2.00 Cyl	4.05	4.40
2.25 to 3.00 Cyl	4.30	4.90
3.25 to 4.00 Cyl		5.40

All above items controlled under Fair Trade Acts.

1550 CERTIFIED SERIES SINGLE VISION SINGLE PAIR UNCUT

	Price per pair	
	Uncut	Uncut
Spheres, + or −		
0.12 to 2.00		$2.15
2.25 to 4.00		2.30
4.25 to 6.00		2.45
6.25 to 8.00		3.20
Plano Cylinders, + only		
For Minus Cylinders use Transposed Equivalent:		
0.12 to 2.00 Cyl		2.55
2.25 to 3.00 Cyl		2.75
3.25 to 4.00 Cyl		2.95
Sphero Cylinders:	+ ◇ +	− ◇ +
0.12 to 2.00 Sph. ◇		
0.12 to 2.00 Cyl	$2.55	$2.75
2.25 to 3.00 Cyl	2.75	3.00
3.25 to 4.00 Cyl		3.25
2.25 to 4.00 Sph. ◇		
0.12 to 2.00 Cyl	2.95	3.25
2.25 to 3.00 Cyl	3.15	3.50
3.25 to 4.00 Cyl		3.75
4.25 to 6.00 Sph. ◇		
0.12 to 2.00 Cyl	3.90	4.00
2.25 to 3.00 Cyl	4.10	4.50
3.25 to 4.00 Cyl		5.00
Plano Uncut:		
6.00 Curve:		
80 mm		$2.05
67 mm		2.60
63 mm		3.15
71 mm		3.75
80 mm		4.35

All above items controlled under Fair Trade Acts.

1551 DUO-SITE BIFOCAL BLANK CHART

Curve on segment side	Amount added 0.50	0.75	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	3.75	4.00
6.00	708	710	712	714	716	718	720	722	724	726	728	730	732	.....	.....
6.25															
6.50	707	709	711	713	715	717	719	721	723	725	727	729	731	.....	.....
6.75															
7.00	706	708	710	712	714	716	718	720	722	724	726	728	730	732	.....
7.25															
7.50	705	707	709	711	713	715	717	719	721	723	725	727	729	731	.....
7.75															
8.00	804	806	808	810	812	814	816	818	820	822	824	826	828	830	832
8.25															
8.50	.....	805	807	809	811	813	815	817	819	821	823	825	827	829	831
8.75															
9.00	.....	804	806	808	810	812	814	816	818	820	822	824	826	828	830
9.25															
9.50	.....	.....	805	807	809	811	813	815	817	819	821	823	825	827	829
9.75															
10.00	.....	.....	804	806	808	810	812	814	816	818	820	822	824	826	828
10.25															
10.50	.....	.....	.....	805	807	809	811	813	815	817	819	821	823	825	827
10.75															
11.00	.....	.....	.....	804	806	808	810	812	814	816	818	820	822	824	826
11.25															
11.50	.....	.....	.....	.....	805	807	809	811	813	815	817	819	821	823	825
11.75															

1552 Table of Grinding Tools To Use With Soft-Lite Thin-Lite Blanks

To grind	Use tool
4.00	3.12
4.25	3.25
4.50	3.50
4.75	3.62
5.00	3.87
5.25	4.12
5.50	4.25
5.75	4.50
6.00	4.62
6.25	4.75
6.50	5.00
6.75	5.12
7.00	5.37
7.25	5.62
7.50	5.75
7.75	6.00
8.00	6.12
8.25	6.37
8.50	6.50
8.75	6.75
9.00	6.87
9.25	7.12
9.50	7.25
9.75	7.50
10.00	7.62
10.25	7.87
10.50	8.00
10.75	8.25
11.00	8.50
11.25	8.62
11.50	8.87
11.75	9.00
12.00	9.25

To grind	Use tool
12.25	9.37
12.50	9.62
12.75	9.75
13.00	10.00
13.25	10.12
13.50	10.37
13.75	10.62
14.00	10.75
14.25	11.00
14.50	11.12
14.75	11.37
15.00	11.50
15.25	11.75
15.50	11.87
15.75	12.12
16.00	12.25
16.25	12.50
16.50	12.62
16.75	12.87
17.00	13.12
17.25	13.25
17.50	13.50
17.75	13.62
18.00	13.87
18.25	14.00
18.50	14.25
18.75	14.37
19.00	14.62
19.25	14.75
19.50	15.00
19.75	15.12
20.00	15.37

Example: To grind a 9.00 D. surface on Soft-Lite Thin-Lite blanks use a regular 6.87 D. grinding tool. *Soft-Lite.

Thin-Lite blanks are products of the Soft-Lite Lens Company, Inc., 745 Fifth Avenue, New York City.

*Reg. U. S. Pat. Off.

There are two types of Soft-Lite Registered Dispensing Licenses—the Stock License and the Prescription License. With the exception of Orthogon Licensees and Panoptik Licensees (who have certain privileges indicated below) Soft-Lite Lenses are sold only to Soft-Lite Licensees. Stock Licensees only may purchase Soft-Lite Lenses in uncut form from the Stock Price List. They must be equipped with surfacing machinery to purchase semifinished lenses or molded blanks.

Oculists who do their own dispensing are appointed by Soft-Lite Distributors, by letter on the Soft-Lite Distributor's letterhead, as Prescription Licensees. Orthogon Franchise Dealers who are not Soft-Lite Prescription or Stock Licensees are automatically listed as Soft-Lite Prescription Licensees, so that they are entitled to purchase Soft-Lite Lenses in the regular ("Certified") series on a prescription basis. Soft-Lite Licenses are not transferable.

Orthogon Licensees and Panoptik Licensees, even if they are not Soft-Lite Licensees, are privileged to purchase Orthogon Soft-Lite Lenses or Panoptik Soft-Lite Bifocals, respectively. Similarly, Soft-Lite Stock Licensees, even if they are not Orthogon Licensees, are privileged to purchase Orthogon Soft-Lite Lenses on a stock basis. However, Soft-Lite Licensees who are not Panoptik Licensees cannot buy Panoptik Soft-Lite Bifocals on any basis.

Both Soft-Lite Stock and Prescription Licensees are classified as either "active" or "inactive," depending upon the proportion of Soft-Lite Lenses purchased to their total annual lens usage. With the exception of certain items, the distribution of all important pieces of Soft-Lite sales promotion material are restricted to active Licensees only.

A Soft-Lite Identification Plaque is furnished to all Soft-Lite Licensees. The Soft-Lite Protection Certificate identifies genuine Soft-Lite Lenses to the dispenser and to the patient, and indicates the wholesale source of supply.

Requirements—Stock License

1. A. Must have fulfilled the legal requirements applicable to his profession.

B. Must not indulge in any form of "bait" advertising.

C. Must not indulge in installment advertising in which price is mentioned in any form.

D. Must conduct his business or practice in a reputable and ethical manner.

2. Must have cutting and edging equipment in regular use.

1554 3. Must place an initial lens stock order for a minimum of 50 pairs of uncut Soft-Lite Lenses, for complete shipment upon acceptance of the application.

If the prospect has own surfacing plant he may qualify by ordering 25 pairs of uncut Soft-Lite Lenses and a sufficient quantity of semifinished lenses, which may include bifocal blanks, to the total amount of the value of 50 pairs of uncut lenses.

Prescription License

1. A. Must have fulfilled the legal requirements applicable to his profession.

B. Must not indulge in any form of bait advertising.

C. Must not indulge in installment advertising in which price is mentioned in any form.

D. Must conduct his business or practice in a reputable and ethical manner.

Combination Soft-Lite License—Orthogon License

A customer who is neither a Soft-Lite Stock Licensee nor an Orthogon Franchise Dealer may qualify for both Licenses simultaneously providing, of course, that he meets all of the necessary requirements. In this case both the procedure for selling a Soft-Lite Stock License and that of appointing an Orthogon Licensee must be followed. Such a transaction can only be handled by a wholesaler who is both a Soft-Lite Distributor and an Orthogon Distributor. The Initial lens stock must call for a minimum of 50 pairs of Soft-Lite Lenses and 100 pairs of Orthogon Lenses and may be made up various assortments, a pair of Orthogon Soft-Lite Lenses being considered as both a pair of Soft-Lite Lenses and a pair of Orthogon Lenses. For example, an order for 50 pairs of Orthogon Soft-Lite Lenses and 50 pairs of white Orthogon Lenses would meet the initial stock requirements.

Licensing Procedure—Stock License

A. By Salesmen.

1. Investigates the prospect carefully to determine whether all requirements can be fulfilled.

2. Obtains the applicant's signature on the application, in triplicast. The terms of the License, as shown on the cover of the pad of application forms, are also a part of the application and should be read by the applicant.

3. Fills in the business information data, specifies the promotional material required, and signs in space indicated.

4. Sends the original and duplicate copies of the application to the main office of the Soft-Lite Distributor with the initial stock order. He retains the triplicate copy for his reference.

1555 B. By the Main Office of the Soft-Lite Distributor.

1. If the application is approved by the main office of the Distributor, the original and duplicate copies are signed as indicated.

2. The original copy is then sent to the Soft-Lite Lens Company together with the initial lens stock order.

C. By the Soft-Lite Lens Company.

1. On approval of the application by the Soft-Lite Lens Company, a Registered Dispensing License (Stock Classification) is sent to the Licensee.

2. An Identification Plaque bearing the number specified in the License is also sent to the Licensee.

3. The initial lens stock and promotional material requested is sent direct to the Licensee from New York.

4. Slips carrying the name and address for affixing to Soft-Lite Distributors' Soft-Lite Licensee Lists are sent to all Soft-Lite Distributors in the territory of the applicant, notifying them of the appointment as a Soft-Lite Stock Licensee.

5. If the application is rejected, the Soft-Lite Lens Company will notify the Distributor that the application has not been approved.

Prescription License

The Soft-Lite Prescription License is a dispensing license and it is only necessary, therefore, for refractionists or retailers who actually dispense Soft-Lite Lenses to the consuming public to be licensed. This includes all optometrists, retail dispensing opticians, and oculists who do their own dispensing. It is not necessary that oculists who dispense through either a wholesale or retail dispensing optician be licensed.

Licensing Procedure

A. By Salesman.

1. Investigates the prospects carefully to determine whether all the requirements can be fulfilled.

2. Fills in the Recommendation Card advising the Soft-Lite Lens Company of the desire of the applicant to become a Soft-Lite Prescription Licensee.

3. Fills in the business information data and specifies the promotional material required.

4. Sends the original signed Recommendation Card to the main office of the Soft-Lite Distributor.

B. By the Main Office of the Distributor.

1. On approval by the main office of the Distributor the Recommendation Card is sent to the Soft-Lite Lens Company.

C. By the Soft-Lite Lens Company.

1. On approval of the application by the Soft-Lite Lens Company, a letter is sent to the applicant together with a Registered Dispensing License—(Prescription Classification).

1556 2. An Identification Plaque bearing the number specified in the License is also sent to the Licensee.

3. The promotional material requested is sent direct to the Licensee from New York.

4. Slips carrying the name and address for affixing to Distributors' Soft-Lite Licensee Lists are sent to all Soft-Lite Distributors in the territory of the applicant, notifying them of the appointment as a Soft-Lite Prescription Licensee.

5. If the application is rejected, the Soft-Lite Lens Company will notify the Distributor that the recommendation has not been approved.

Termination Procedure

If it is found necessary to terminate a License, in accordance with the provisions of the License, a letter will be sent to the Licensee, with a copy to the Soft-Lite Distributor from whom the application was originally received, notifying the Licensee that his License will be terminated 30 days after the date of the letter. At the expiration of the 30 day period a notice is sent to all Soft-Lite Distributors in the territory, advising that the License has been terminated, and to remove the name from their Soft-Lite Licensee List.

1556–A STOCK LICENSEE PRICE LIST

April 1, 1941

	Less than 10 pairs	10 pairs or more
Soft-Lite Ful-Vue Bifocal Blanks	5.35	4.85

1557 PRESCRIPTION

SOFT-LITE LENSES PRESCRIPTION PRICE LIST

April 1, 1936

Corrected to Dec. 1, 1937

SOFT-LITE LENS COMPANY, INC.

745 Fifth Avenue, New York

1558 SOFT-LITE LENSES

made by the Bausch & Lomb Optical Company exclusively for the Soft-Lite Lens Company, Inc. present the only neutral absorptive complete single vision and bifocal lens service of the highest quality only.

In their twenty-eight year history Soft-Lite Lenses have moved forward steadily and progressively until today they are the recognized international standard for quality glare-reducing ophthalmic lenses.

Many reasons for this position are evident:

Soft-Lite Lenses transmit light evenly, neutrally, throughout the visible spectrum; they are not habit-forming; they do not impair color perception nor reduce visibility; their pigmentation is uniform and permanent because of the scientific care in every step of the manufacturing process "from the sand to the finished lens" characteristic of Bausch and Lomb manufacture and quality standards.

Soft-Lite Lenses recommend themselves to patients because they blend so harmoniously with the wearer's complexion.

Soft-Lite Lenses are available in four densities, all of the same pigmentation, increasing in density only in the progression from Shade No. 1 to Shade No. 4.

All Soft-Lite Glass is made by Bausch & Lomb in Rochester, N. Y.

The complete Soft-Lite lens service is available everywhere through selected wholesalers whose standards of quality and service are recognized as of the highest.

The prices herein are subject to change without notice and to increase for taxes, excises or other charges imposed by government authorities with respect to articles listed herein or to the sale thereof.

1559 SOFT-LITE SINGLE VISION LENSES

Price per pair	Soft-Lite Toric lenses		Soft-Lite Orthogon lenses	
	Edged, bevel or rimless	Drilled, mounted or inserted	Edged, bevel or rimless	Drilled, mounted or inserted
Spheres + or −:				
Plano to 4.00	$3.25	$3.50	$3.75	$4.00
4.25 to 6.00	3.50	3.75	4.00	4.25
6.25 to 9.00	4.50	4.75	4.50	4.75
9.25 to 12.00	5.50	5.75	5.50	5.75
12.25 to 16.00	6.50	6.75	6.50	6.75
16.25 to 20.00	7.50	7.75	7.50	7.75
Plano cylinders, plus only. For minus cylinders, use −⊂+equivalents:				
0.12 to 3.00	3.50	3.75	4.00	4.25
3.25 to 4.00	3.75	4.00	4.25	4.50
4.25 to 6.00	4.25	4.50	4.75	5.00
Sphero cylinders + on +:				
0.12 to 4.00 Sph. ⊂				
0.12 to 3.00 Cyl	3.50	3.75	4.00	4.25
3.25 to 4.00 Cyl	3.75	4.00	4.25	4.50
4.25 to 6.00 Cyl	4.50	4.75	5.00	5.25
4.25 to 6.00 Sph. ⊂				
0.12 to 3.00 Cyl	4.50	4.75	5.00	5.25
3.25 to 4.00 Cyl	5.25	5.50	5.75	6.00
4.25 to 6.00 Cyl	6.00	6.25	6.50	6.75
6.25 to 9.00 Sph. ⊂				
0.12 to 3.00 Cyl	5.50	5.75	5.50	5.75
3.25 to 4.00 Cyl	6.25	6.50	6.25	6.50
4.25 to 6.00 Cyl	7.00	7.25	7.00	7.25
9.25 to 12.00 Sph. ⊂				
0.12 to 3.00 Cyl	6.50	6.75	6.50	6.75
3.25 to 4.00 Cyl	7.25	7.50	7.25	7.50
4.25 to 6.00 Cyl	8.00	8.25	8.00	8.25
12.25 to 16.00 Sph. ⊂				
0.12 to 3.00 Cyl	7.50	7.75	7.50	7.75
3.25 to 4.00 Cyl	8.25	8.50	8.25	8.50
4.25 to 6.00 Cyl	9.00	9.25	9.00	9.25
16.25 to 20.00 Sph. ⊂				
0.12 to 3.00 Cyl	8.50	8.75	8.50	8.75
3.25 to 4.00 Cyl	9.25	9.50	9.25	9.50
4.25 to 6.00 Cyl	10.00	10.25	10.00	10.25
(For Uncut Deduct 25c per Pair from Edged Prices)				

Add to above:	Per pair
For all minus or plus combinations	$0.25
For Prism ⊂ Cylinder or Sphero Cylinder	
0.50△ to 3.50△	1.50
4.00△ to 7.00△	2.00
For Prism ⊂ Sphere	
0.50△ to 3.50△	1.00
4.00△ to 7.00△	1.50

Add to above:	Per pair
For Concave Lenticular, round field	$2.00
For Concave Lenticular, oval field	4.00
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Perimetric, Orbal, Octagon, Drop Octagon or other special shapes	.50
For Ful-Vue Rimless Shapes other than regular	.75
For Shaping and Fitting frame to Octagon, Orbal and other special shapes	.50

Prescription Price List

Fused Construction—Segment 22 mm Round

DUO-SITE BIFOCALS

Price per pair	Edged, bevel or rimless	Drilled, mounted or inserted
Spheres + or −		
Plano to 2.00	$6.25	$6.75
2.25 or 4.00	6.75	7.25
4.25 to 6.00	7.25	7.75
6.25 to 9.00	8.25	8.75
9.25 to 12.00	9.25	9.75
12.25 to 16.00	10.25	10.75
16.25 to 20.00	11.25	11.75
Plano cylinders, minus only:		
0.12 to 2.00	6.75	7.25
2.25 to 3.00	7.25	7.75
3.25 to 4.00	7.75	8.25
4.25 to 6.00	8.25	8.75

All Plano Cylinder and Sphero Cylinder prescriptions ordered in plus cylinder form are transposed to minus cylinder form, and charges are made for sphero powers combined with minus cylinders.

(Soft-Lite Kryptok—same price as Duo-Site)

Add to above:	Per pair
For Prism ⊃ Sphere or Cylinder, in distance portion:	
0.50△ to 3.50△	$1.50
4.00△ to 7.00△	2.00
For Reading Additions stronger than 4.50 D	1.50
For Concave Lenticular, oval field	4.00

Add to above:	Per pair
For Concave Lenticular, round field	$2.00
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Orbal, Octagon, Perimetric, or other special shapes	.75
For Shaping and fitting frame to Octagon, Orbal and other special shapes	.50
For Uncut Lenses deduct 75c per pair from edged prices.	

DUO-SITE BIFOCALS

Fused Construction—Segment 22 mm Round

	Edged, bevel, or rimless	Drilled, mounted, or inserted
Sphero Cylinders + ◇ − or − ◇ −		
0.12 to 2.00 Sph.:		
0.12 to 2.00 Cyl	$6.75	$7.25
2.25 to 3.00 Cyl	7.25	7.75
3.25 to 4.00 Cyl	7.75	8.25
4.25 to 6.00 Cyl	8.25	8.75
2.25 to 4.00 Sph.:		
0.12 to 2.00 Cyl	7.25	7.75
2.25 to 3.00 Cyl	7.75	8.25
3.25 to 4.00 Cyl	8.25	8.75
4.25 to 6.00 Cyl	8.75	9.25
4.25 to 6.00 Sph.:		
0.12 to 2.00 Cyl	7.75	8.25
2.25 to 3.00 Cyl	8.25	8.75
3.25 to 4.00 Cyl	8.75	9.25
4.25 to 6.00 Cyl	9.25	9.75
6.25 to 9.00 Sph.:		
0.12 to 2.00 Cyl	8.75	9.25
2.25 to 3.00 Cyl	9.25	9.75
3.25 to 4.00 Cy	9.75	10.25
4.25 to 6.00 Cyl	10.25	10.75
9.25 to 12.00 Sph.:		
0.12 to 2.00 Cyl	9.75	10.25
2.25 to 3.00 Cyl	10.25	10.75
3.25 to 4.00 Cyl	10.75	11.25
4.25 to 6.00 Cyl	11.25	11.75
12.25 to 16.00 Sph.:		
0.12 to 2.00 Cyl	10.75	11.25
2.25 to 3.00 Cyl	11.25	11.75
3.25 to 4.00 Cyl	11.75	12.25
4.25 to 6.00 Cyl	12.25	12.75
16.25 to 20.00 Sph.:		
0.12 to 2.00 C	11.75	12.25
2.25 to 3.00 Cyl	12.25	12.75
3.25 to 4.00 Cyl	12.75	13.25
4.25 to 6.00 Cyl	13.25	13.75

(Soft-Lite Kryptok same price as Duo-Site)

All Plano Cylinder and Sphero Cylinder prescriptions ordered in plus cylinder form are transposed to minus cylinder form, and charges are made for sphero powers combined with minus cylinders.

Add to above:	Per pair
For Prism ◇ Sphere or Cylinder, in distance portion:	
0.50△ to 3.50△	$1.50
4.00△ to 7.00△	2.00
For Reading Additions stronger than 4.50 D	1.50
For Concave Lenticular, oval field	4.00
Add to above:	
For Concave Lenticular, round field	2.00
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Orbal, Octagon, Perimetric, or other special shapes	.75
For Shaping and fitting frame to Octagon, Orbal and other special shapes	.50

For Uncut Lenses deduct 75c per pair from edged prices.

Prescription Price List

SOFT-LITE PANOPTIK BIFOCALS

Corrected Curves

Price per pair	Edged, bevel, or rimless	Drilled, mounted, or inserted
Spheres + or −		
Plano to 2.00	$9.25	$9.75
2.25 to 4.00	9.75	10.25
4.25 to 6.00	10.25	10.75
6.25 to 9.00	11.25	11.75
9.25 to 12.00	12.25	12.75
12.25 to 16.00	13.25	13.75
16.25 to 20.00	14.25	14.75
Plano cylinders, minus only:		
0.12 to 2.00	9.75	10.25
2.25 to 3.00	10.25	10.75
3.25 to 4.00	10.75	11.25
4.25 to 6.00	11.25	11.75

Panoptik Soft-Lite Bifocals are made with minus cylinders. All Plano Cylinder and Sphero Cylinder prescriptions are transposed to minus cylinder form, and charges are made for sphero powers combined with minus cylinders.

	Per pair
Add to above:	
For Concave Lenticular, oval field	$4.00
For Concave Lenticular, round field	2.00
For Orbal, Perimetric, Octagon, or other special shapes	.75
For Shaping and Fitting frame to Octagon, Orbal and other special shapes	.50
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Reading Additions stronger than 4.50 D	1.50
For Extra Large Lens Sizes, prices on request.	
For Uncut Lenses, deduct 50c per pair from edged prices.	
Uncut Soft-Lite Lenticular Cataract Bifocals, all foci	22.00
Add to above:	
For Prism in Segment only, up to 1.50△	3.00
For Prism in Segment only, 1.75△ to 3.00△	5.00
For R-F-C- (Reading Field Centered) Segment for plus distance corrections to neutralize prism base out at near point	1.25
For Prism in Distance or Main Blank to 2.00△	1.50
For Prism in Distance or Main Blank—from 2.25△ to 4.00△	2.00
For Minus Segments	3.50
For Two Segments placed on same lens	4.00
For Trifocal	3.50
For Cylinders 6.25 to 9.00 D	2.00

1563 SOFT-LITE PANOPTIK BIFOCALS

Corrected Curves

Price Per Pair

	Edged, bevel, or rimless	Drilled, mounted or inserted
SPHERO CYLINDERS + ○ − or − ○ −		
0.12 to 2.00 Sph:		
0.12 to 2.00 Cyl	$9.75	$10.25
2.25 to 3.00 Cyl	10.25	10.75
3.25 to 4.00 Cyl	10.75	11.25
4.25 to 6.00 Cyl	11.25	11.75
2.25 to 4.00 Sph.:		
0.12 to 2.00 Cyl	10.25	10.75
2.25 to 3.00 Cyl	10.75	11.25
3.25 to 4.00 Cyl	11.25	11.75
4.25 to 6.00 Cyl	11.75	12.25
4.25 to 6.00 Sph.:		
0.12 to 2.00 Cyl	10.75	11.25
2.25 to 3.00 Cyl	11.25	11.75
3.25 to 4.00 Cyl	11.75	12.25
4.25 to 6.00 Cyl	12.25	12.75
6.25 to 9.00 Sph.:		
0.12 to 2.00 Cyl	11.75	12.25
2.25 to 3.00 Cyl	12.25	12.75
3.25 to 4.00 Cyl	12.75	13.25
4.25 to 6.00 Cyl	13.25	13.75
9.25 to 12.00 Sph.:		
0.12 to 2.00 Cyl	12.75	13.25
2.25 to 3.00 Cyl	13.25	13.75
3.25 to 4.00 Cyl	13.75	14.25
4.25 to 6.00 Cyl	14.25	14.75
12.25 to 16.00 Sph.:		
0.12 to 2.00 Cyl	13.75	14.25
2.25 to 3.00 Cyl	14.25	14.75
3.25 to 4.00 Cyl	14.75	15.25
4.25 to 6.00 Cyl	15.25	15.75
16.25 to 20.00 Sph.:		
0.12 to 2.00 Cyl	14.75	15.25
2.25 to 3.00 Cyl	15.25	15.75
3.25 to 4.00 Cyl	15.75	16.25
4.25 to 6.00 Cyl	16.25	16.75
Panoptik Soft-Lite Lenticular Cataract Bifocal, all powers	23.00	24.00

Panoptik Soft-Lite Bifocals are made with minus cylinders. All Plano Cylinder and Sphero Cylinder prescriptions are transposed to minus cylinder form, and charges are made for sphero powers combined with minus cylinders.

Add to above:	Per pair
For Prism in Segment only, up to 1.50△	$3.00
For Prism in Segment only, 1.75△ to 3.00△	5.00
For R-F-C- (Reading Field Centered) Segment for plus distance corrections to neutralize prism base out at near point	1.25
For Prism in Distance or Main Blank to 2.00△	1.50
For Prism in Distance or Main Blank—from 2.25△ to 4.00△	2.00
For Minus Segments	3.50
For Two Segments placed on same lens	4.00
For Trifocal	3.50
For Cylinders 6.25 to 9.00 D	2.00
Add to above:	
For Concave Lenticular, oval field	4.00
For Concave Lenticular, round field	2.00
For Orbal, Perimetric, Octagon, or other special shapes	.75
For Shaping and Fitting frame to Octagon, Orbal and other special shapes	.50
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Reading Additions stronger than 4.50 D	1.50
For Extra Large Lens Sizes, prices on request.	
For Uncut Lenses, deduct 50c per pair from edged prices.	
Uncut Soft-Lite Lenticular Cataract Bifocals, all foci	22.00

1564 SOFT-LITE ORTHOGON LUTEX BIFOCALS

Corrected Curves

Maximum Size of Reading Portion: "A" 38 x 19 mm; "B" 22.5 mm Round

Price per pair	STYLE "A"		STYLE "B"	
	Edged bevel or rimless	Drilled mounted or inserted	Edged bevel or rimless	Drilled mounted or inserted
SPHERES + or −				
Plano to 2.00	$7.75	$8.25	$8.50	$9.00
2.25 to 4.00	8.25	8.75	9.00	9.50
4.25 to 6.00	8.75	9.25	9.50	10.00
6.25 to 9.00	9.75	10.25	10.50	11.00
9.25 to 12.00	10.75	11.25	11.50	12.00
12.25 to 16.00	11.75	12.25	12.50	13.00
16.25 to 20.00	12.75	13.25	13.50	14.00
Plano Cylinders, + ONLY				
0.12 to 2.00	8.25	8.75	9.00	9.50
2.25 to 3.00	8.75	9.25	9.50	10.00
3.25 to 4.00	9.25	9.75	10.00	10.50
4.25 to 6.00	9.75	10.25	10.50	11.00

For regular Toric Soft-Lite Ultex deduct 25c per pair.
Orthogon Soft-Lite Ultex Bifocals are made with plus cylinders. All Plano Cylinder and Sphere Cylinder prescriptions ordered in minus cylinder form are transposed to plus cylinder form and charges are made for sphero powers combined with plus cylinders.

Add to above:	Per pair
For "AA" Bifocals, segment heights to 30 mm, add to price of "B" Style Orthogon Soft-Lite Ultex	$1.00
For Prism ⊃ Sphere, Cylinder or Sphero Cylinder:	
0.50△ to 3.50△	1.50
4.00△ to 7.00△	2.50
For Prism in reading portion only:	
Base In or Base Out: to 3.50△	3.50
Base In or Base Out: over 3.50△	4.50
Base Up, Base Down or Base Oblique: to 3.50△	6.50
Base Up, Base Down or Base Oblique: over 3.50△	7.50
Add to above:	
For Reading Additions stronger than 4.50D	1.50
For Concave Lenticular, round field	2.00
For Concave Lenticular, oval field	4.00
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Orbal, Octagon, Perimetric or other special shapes	.75
For Shaping and Fitting frame to Octagon, Orbal and other special shapes	.50

For Uncut Lenses, deduct 50c per pair from edged prices.

Prescription Price List

1565 SOFT-LITE ORTHOGON ULTEX BIFOCALS

Corrected Curves

Maximum Size of Reading Portion: "A" 38 x 19 mm.; "B" 22.5 mm. Round

	Style "A"		Style "B"	
	Edged, bevel or rimless	Drilled, mounted or inserted	Edged, bevel or rimless	Drilled, mounted or inserted
Sphero Cylinders+○+or−○+:				
0.12 to 2.00 Sph.:				
0.12 to 2.00 Cyl	$8.25	$8.75	$9.00	$9.50
2.25 to 3.00 Cyl	8.75	9.25	9.50	10.00
3.25 to 4.00 Cyl	9.25	9.75	10.00	10.50
4.25 to 6.00 Cyl	9.75	10.25	10.50	11.00
2.25 to 4.00 Sph.:				
0.12 to 2.00 Cyl	8.75	9.25	9.50	10.00
2.25 to 3.00 Cyl	9.25	9.75	10.00	10.50
3.25 to 4.00 Cyl	9.75	10.25	10.50	11.00
4.25 to 6.00 Cyl	10.25	10.75	11.00	11.50
4.25 to 6.00 Sph.:				
0.12 to 2.00 Cyl	9.25	9.75	10.00	10.50
2.25 to 3.00 Cyl	9.75	10.25	10.50	11.00
3.25 to 4.00 Cyl	10.25	10.75	11.00	11.50
4.25 to 6.00 Cyl	10.75	11.25	11.50	12.00
6.25 to 9.00 Sph.:				
0.12 to 2.00 Cyl	10.25	10.75	11.00	11.50
2.25 to 3.00 Cyl	10.75	11.25	11.50	12.00
3.25 to 4.00 Cyl	11.25	11.75	12.00	12.50
4.25 to 6.00 Cyl	11.75	12.25	12.50	13.00

For regular Toric Soft-Lite Ultex deduct 25c per pair.

Orthogon Soft-Lite Ultex Bifocals are made with plus cylinders. All Plano Cylinder and Sphero Cylinder prescriptions ordered in minus cylinder form are transposed to plus cylinder form and charges are made for sphero powers combined with plus cylinders.

Add to above:	Per pair
For "AA" Bifocals, segment heights to 30 mm., add to price of "B" Style Orthogon Soft-Lite Ultex	$1.00
For Prism ○ Sphere, Cylinder or Sphero Cylinder:	
0.50△ to 3.50△	1.50
4.00△ to 7.00△	2.50
For Prism in reading portion only:	
Base In or Base Out: to 3.50△	3.50
Base In or Base Out: over 3.50△	4.50
Base Up, Base Down or Base Oblique: to 3.50△	6.50
Base Up, Base Down or Base Oblique: over 3.50△	7.50
Add to above:	
For Reading Additions stronger than 4.50D	1.50
For Concave Lenticular, round field	2.00
For Concave Lenticular, oval field	4.00
For Drop Oval, bevel edge, except regular Ful-Vue frames	.25
For Orbal, Octagon, Perimetric or other special shapes	.75
For Shaping and Fitting frame to Octagon, Orbal and other special shapes	.50

For Uncut Lenses, deduct 50c per pair from edged prices.

Prescription Price List

1566

SOFT-LITE MYO-DISC LENSES

Single Vision and Bifocal

Concave Lenticular with Plano Margin

Price per pair—Single vision	Edged, mounted or inserted
Spheres, Minus:	
6.25 to 9.00	$9.50
9.25 to 12.00	10.50
12.25 to 16.00	11.50
16.25 to 20.00	12.50
20.25 to 30.00	13.50
Sphere, Cylinders—○—:	
6.25 to 9.00 Sph.:	
0.12 to 2.00 Cyl	11.50
2.25 to 3.00 Cyl	12.00
3.25 to 4.00 Cyl	12.50
4.25 to 6.00 Cyl	13.00
9.25 to 12.00 Sph.:	
0.12 to 2.00 Cyl	12.50
2.25 to 3.00 Cyl	13.00
3.25 to 4.00 Cyl	13.50
4.25 to 6.00 Cyl	14.00
12.25 to 16.00 Sph.:	
0.12 to 2.00 Cyl	13.50
2.25 to 3.00 Cyl	14.00
3.25 to 4.00 Cyl	14.50
4.25 to 6.00 Cyl	15.00
16.25 to 20.00 Sph.:	
0.12 to 2.00 Cyl	14.50
2.25 to 3.00 Cyl	15.00
3.25 to 4.00 Cyl	15.50
4.25 to 6.00 Cyl	16.00
20.25 to 30.00 Sph.:	
0.12 to 2.00 Cyl	15.50
2.25 to 3.00 Cyl	16.00
3.25 to 4.00 Cyl	16.50
4.25 to 6.00 Cyl	17.00

For Myo-Disc Soft-Lite Bifocals, any reading addition, add to above 4.10
For Uncut Lenses, deduct 50c per pair from above prices.

Sphere Openings on Single Vision Myo-Disc Lenses:
6.25 to 9.00 D-30 mm.
9.00 to 16.00 D-25 mm.
14.00 to 20.00 D-22 mm.
18.00 to 30.00 D-20 mm.
} Specify size of opening desired.

Sphere Openings on Double Vision Myo-Disc Lenses all foci:
Reading Portion 19.5 mm. wide by 12 mm. high
Distance Portion 22.5 mm. wide by approx. 18.5 mm high
Dividing Line approx. 7 mm. below Center of Distance

Prescription Price List

1567

PRESCRIPTION

August 26, 1940

SOFT-LITE "C" AND "D" BIFOCALS

Fused Nokrome Construction Orthogon Corrected Curves

"C" Segment-16 mm. round—"D" Segment-20 mm. round

Price per pair	Edged, bevel, or rimless	Drilled, mounted, or inserted
Spheres +or−		
0.12 to 2.00	$6.00	$6.50
2.25 to 4.00	6.50	7.00
4.25 to 6.00	7.00	7.50
6.25 to 9.00	7.50	8.00
Plano cylinders, minus only:		
0.12 to 2.00	6.50	7.00
2.25 to 3.00	6.75	7.25
3.25 to 4.00	7.00	7.50
Sphero cylinders +○− or −○−		
0.12 to 2.00 Sph.:		
0.12 to 2.00 Cyl	6.50	7.00
2.25 to 3.00 Cyl	6.75	7.25
3.25 to 4.00 Cyl	7.00	7.50
2.25 to 4.00 Sph.:		
0.12 to 2.00 Cyl	7.00	7.50
2.25 to 3.00 Cyl	7.25	7.75
3.25 to 4.00 Cyl	7.50	8.00
4.25 to 6.00 Sph.:		
0.12 to 2.00 Cyl	7.50	8.00
2.25 to 3.00 Cyl	7.75	8.25
3.25 to 4.00 Cyl	8.00	8.50
6.25 to 9.00 Sph.:		
0.12 to 2.00 Cyl	8.00	8.50
2.25 to 3.00 Cyl	8.25	8.75
3.25 to 4.00 Cyl	8.50	9.00

Soft-Lite "C" and "D" bifocals are made with minus cylinders. All Plano Cylinder and Sphero Cylinder prescriptions ordered in plus cylinder form are transposed to minus cylinder form, and priced accordingly.

Add to above:	Per pair
for Spheres above 9.00D, add to price of 9.00D sphere	$1.00
for Cylinders above 4.00D, add to price of 4.00D Cyl.:	
For 4.25 to 6.00D Cyl. add	.50
For 6.25 to 9.00D Cyl. add	1.00
For Prism in distance:	
0.50 to 3.50	1.50
4.00 to 7.00	2.00
For two Segments placed on same Lens	4.00
For Concave Lenticular, oval field	4.00
For Concave Lenticular, round field	2.00
For Reading Additions stronger than 4.50D	1.50

For Uncut Lenses deduct 50¢ per pair from edged prices.
For Special Shapes and other Prescription Extras, see B Price List.

1568

Soft-Lite Prescription Price List

SOFT-LITE FUL-VUE BIFOCALS

Fused Construction

	Edged, bevel, or rimless	Drilled, mounted, or inserted
Spheres + or −	Price per pair	Price per pair
Plano to 2.00	$7.00	$7.50
2.25 to 4.00	7.50	8.00
4.25 to 6.00	8.00	8.50
6.25 to 9.00	8.50	9.00
Plano Cylinders, Minus Only:		
0.12 to 2.00	7.50	8.00
2.25 to 3.00	7.75	8.25
3.25 to 4.00	8.00	8.50
Sphero Cylinders + ○ − or − ○ −:		
0.12 to 2.00 Sph.:		
0.12 to 2.00 Cyl	7.50	8.00
2.25 to 3.00 Cyl	7.75	8.25
3.25 to 4.00 Cyl	8.00	8.50
2.25 to 4.00 Sph.:		
0.12 to 2.00 Cyl	8.00	8.50
2.25 to 3.00 Cyl	8.25	8.75
3.25 to 4.00 Cyl	8.50	9.00
4.25 to 6.00 Sph.:		
0.12 to 2.00 Cyl	8.50	9.00
2.25 to 3.00 Cyl	8.75	9.25
3.25 to 4.00 Cyl	9.00	9.50
6.25 to 9.00 Sph.:		
0.12 to 2.00 Cyl	9.00	9.50
2.25 to 3.00 Cyl	9.25	9.75
3.25 to 4.00 Cyl	9.50	10.00

Soft-Lite Ful-Vue Bifocals are made with minus cylinders. All Plano Cylinder and Sphero Cylinder prescriptions are transposed to minus cylinder form, and charges are made for sphere powers combined with minus cylinders.

For Uncut Lenses, deduct 50¢ per pair from Edged Prices.

Add to above:	Per pair
For Spheres above 9.00D add to price of 9.00D Sphere	$1.00
For Cylinders 4.25 to 6.00D add to price of 4.00D Cyl	.50
For Cylinders 6.25 to 9.00D add to price of 4.00D Cyl	1.00
Add to above:	
For prism in distance portion:	
0.50 to 3.50	1.50
3.75 to 7.00	2.00
7.25 to 10.00	3.00
For Concave Lenticular, Round Field	2.00
For Concave Lenticular, Oval Field	4.00
For Reading Additions stronger than 4.00D and up to 6.00D	1.50
Stronger than 6.00D	6.50

1569

Exhibit 170

CHICAGO, ILLINOIS,
October 12, 1936.

Mr. RAY G. LANDIS,
Soft-Lite Lens Co., Inc.,
119 West 57th Street, New York City, N. Y.

DEAR RAY: Answering your letter of the 6th, wish to say that when in Kalamazoo the last time, in talking about different situations, Mr. King and his assistants stated that they would be able to use quite a few more Soft-Lite lenses if they were able to carry a Wholesale License. I then stated that while I did not know how many they could use, that I should think they would be able

to use a sufficient number to warrant putting in a stock, and that with so few items today on which the wholesaler could make a reasonable profit, that he should certainly bend every effort and get behind those protected items which took them farther away from competition and assured a reasonable profit.

I certainly think it would be worth while for this Wholesale License to be presented to them, and even if it was necessary to spread the proposition out a little bit for them to handle it, I still think that it would be a good idea. As you probably already know, they are very conservative, if not even timid buyers, and I do not think you need to worry very much about their taking on a proposition and not being able to pay for it.

With kindest regards.

Yours very truly,

BAUSCH & LOMB OPTICAL CO.
Chicago Office.

L. I. Withington: M. H. C.

1570 *Exhibit 171*

BAUSCH & LOMB OPTICAL CO.
Established 1853
ROCHESTER, NEW YORK

Confidential

NOVEMBER 2, 1939.

Mr. R. G. LANDIS,
Soft-Lite Lens Co., Inc., New York City.

DEAR RAY: At Dan's instigation, Donald Hicks went over to Pittsburgh and talked with young Haas. The substance of the conversation indicated that, even though he is on Guy Henry's list (we think, through an error in judgment), he has neither a Numont or Ful Vue Wholesale License; furthermore, he is not recognized as a wholesaler by either the American Optical Company or ourselves. He does, however, have wholesale licenses for both Univis and Wilsedge and is recognized as a wholesaler by the Shuron Optical Company.

The purpose of this note is to give you the "tip" that it probably would be unwise for the Soft-Lite Lens Company to recognize him as a wholesaler.

Very truly yours,

BAUCH & LOMB OPTICAL CO.
B. A. R.

B. A. Ramaker: K.

PS: I forgot to add that he does not have a Panoptik Wholesale License.

A true copy from files of Soft-Lite Lens Company.

1571 *Exhibit 172*

SOFT-LITE LENS CO., INC.
Like Cathedral Windows, Soft-Lites Soften the Light
119 West 57th Street
NEW YORK CITY

NOVEMBER 7, 1935.

Mr. A. D. HURST,
Continental Optical Company,
1402 North Capitol Avenue,
Indianapolis, Indiana.

DEAR AL: You will remember that some time ago you wrote me about the United Optical Company opening up in New Orleans and recommended that we place them on our list. I replied that this would be taken care of when Harry Vernon was in New Orleans and that we would certainly consider your recommendation in their behalf seriously.

This is just to advise you that Harry has sold them a Soft-Lite wholesale license, which classification carries a 33⅓% discount, and it appears that all factors have been satisfied in this way.

Thought that you would like to have this information.

With kindest regards, I am

Sincerely,

SOFT-LITE LENS COMPANY, INC.
RAY.

R. G. Landis/D. R.

1572 *Exhibit 173*

SOFT-LITE LENS CO., INC.
Like Cathedral Windows, Soft-Lites Soften the Light
119 West 57th Street
New York City

MARCH 18, 1935.

BUSHWICK OPTICAL COMPANY,
1108 Dekalb Avenue, Brooklyn, New York.

GENTLEMEN: We have before us a copy of your current prescription price list. On page 4 you specify that you are in position to furnish "Soft-Lite A" lenses.

The name "Soft-Lite" is our trade mark which has been duly registered and the use of the name "Soft-Lite" in your price list is an infringement of our trade mark. You, of course, are aware of the fact that Soft-Lite Lenses are offered to the trade only by wholesalers who are duly licensed by us. This is not the case with you and we feel that the statement in your price list is an improper representation to the effect that you are a licensed Soft-Lite wholesale Distributor. We consider such representation unfair business practice.

Demand is hereby made upon you for an accurate sworn itemized accounting of all Soft-Lite Lenses sold by your Company. We will expect to receive this accounting within a week from date.

We further call upon you to refrain from using the name "Soft-Lite" as an infringement of our trade mark and to discontinue the representation by inference that you are a wholesale Distributor of "Soft-Lite Lenses" and to give us your written assurances to such effect.

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis: L. C. K.

1573 *Exhibit 174*

SOFT-LITE LENS CO., INC.

Squibb Building, 745 Fifth Avenue
NEW YORK CITY

APRIL 7, 1938.

BAUSCH & LOMB OPTICAL COMPANY,
Rochester, New York.
Attention: Mr. Buedingen

DEAR MR. BUEDINGEN: The White-Haines Optical Company in Columbus, Ohio, have questioned our invoice B18489 of March 31st—*your invoice C-12544*—for ½ pair of Soft-Lite spherical lenses fitted to frame furnished and shipped to American Optical Company at Akron, Ohio.

We find upon investigation that you received an order direct from the American Optical Company covering ½ pair Panoptik Soft-Lites and ½ pair regular Soft-Lites, which you filled and sent direct to the American Optical Company.

Inasmuch as the American Optical Company are Panoptik agents, they are entitled to buy Panoptik Soft-Lite bifocals and in filling this part of the order you were in accord with our policies. However, as the American Optical Company are not Soft-Lite Licensees, they should not be supplied with regular single vision Soft-Lite Lenses.

Will you, therefore, look into this matter in order to prevent any recurrence of the situation?

Very truly yours,

SOFT-LITE LENS COMPANY, INC.
A. F. IMMIG.

A. F. Immig:A. S.

1574 *Exhibit 175*

CC: NS.
CC: Bar Folder.

APRIL 15, 1938.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Co.,
Rochester, New York.

DEAR BEN: I attach a copy of a letter written by Mr. Immig, of which a copy was directed to your attention on April 7th. This refers to the filling of orders for Soft-Lite Lenses by the Factory for the American Optical Company where shipments are made directly to the American Optical Company and we learn about them only upon receipt of Bausch & Lomb invoices covering same. Despite the fact that this has occurred before at which time we called the matter to the factory's attention, the same thing has happened again.

Your invoice No. D–8124 of April 12th covers one pair of Uncut Thin-Lite Lenses shipped to the American Optical Company at Southbridge. This, of course, should not occur in any case, but more important is the fact that it makes our position what it should not be in view of the action which we have taken in removing the E. W. Reynolds Company and R. Mohr & Sons from our Distributors' list recently, together with all of the attention which this action has attracted on the part of our retail trade and the Coast Distributors. I have in mind particularly the letter from Harry Mohr and the possibility that Riggs, Coast may still be questioning the importance of our taking this move.

Certainly it must be possible for the factory routine to be so arranged so that these occurrences can be eliminated.

We can talk about this matter further on Monday while you are here.

With kindest regards,
Sincerely.

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck. (encl.)

A–72

A true copy from the files of the Soft-Lite Lens Company.
G. DEMET.

1575 *Exhibit 176*

NOVEMBER 14, 1938.

BAUSCH & LOMB OPTICAL CO.,
Rochester, New York

Attention: Mr. Buedingen

DEAR MR. BUEDINGEN: We have been advised by a representative who called on Plumb Eyeglass Company of Troy, N. Y., that this company sent an order for Soft-Lite Lenses direct to you and you made the shipment direct to them. However, this company is not on our list of Licensees and it is a violation of our policy to sell Soft-Lite Lenses to other than Soft-Lite Licensees. We should appreciate it, therefore, that before making any direct shipments on orders received directly from the customers that you check with us or with one of our Wholesalers to ascertain whether or not the customer is on our Licensee list.

The invoice in question in your D1131 dated March 29, 1938.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.

A. F. Immig: A. S.

A true copy from the files of Soft-Lite Lens Company.

G. DEWEY.

1576 *Exhibit 177*

BAUSCH & LOMB OPTICAL CO.
ROCHESTER, N. Y.

NOVEMBER 15, 1938.

SOFT-LITE LENS COMPANY,
745 Fifth Avenue, New York City.

Att: Mr. A. F. Immig.

DEAR MR. IMMIG: We have your letter of November 14th in reference to a Soft-Lite prescription order made up for H. H. Plumb Inc., Troy, New York, and charged on our invoice D1131 dated March 29th, 1938.

This order and one or two previous to that came to us on our regular prescription order form with the Colonial Optical Company, New York City, stamped on the charge side and H. H. Plumb, Inc. stamped on the shipping side.

I do not know and don't think that anyone in our Stock Department remembers whether this order came to us direct from Plumb or through the Colonial Optical Company in New York. At any rate we accepted the order in view of the fact that it was made out in the manner described without checking your licensee list to see whether H. H. Plumb Inc. was or was not a Soft-Lite licensee. We are quite sure that had the order come to us direct, however, it would have been questioned.

May we suggest that you take this matter up with the Colonial Optical Company, New York City, in order that they may in turn inform Plumb that no further orders for Soft-Lite lenses could be accepted since they are not Soft-Lite licensees. It is our belief that the information should come to them through the Colonial Optical Company rather than from us in the event that they should send us further orders.

In the meantime we have cautioned our Stock Department to be careful and not put through any orders direct from retailers without first making sure that the account is a Soft-Lite licensee.

With kind regards,

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
A. D. BUEDINGEN
Lens Sales Department.

A. D. Buedingen: M. C.
BP: 4/2
A true copy from files of Soft-Lite Lens Co.

G. DEWEY.

1577 *Exhibit 178*

MARCH 22, 1940.

Mr. RAY G. LANDIS,
Soft-Lite Lens Company, Inc.,
Squibb Building,
New York City.

DEAR RAY: I have your letter of the 18th relative to the correspondence of Dr. Abell of Henderson, Kentucky.

There's nothing further to be said on this subject. After all, you folks have cancelled the license and that gives us our instructions. In other words, we are not authorized to sell the doctor so as far as we're concerned, that ends the story.

With best of wishes,

Yours very truly,

DDH: FH.

Riggs Opt. Co.

1017 Capitol Ave

TEX. | HOUSTON

10/28 Speak

(Mr. C. L. Smith former
(Riggs Opt. here)

VISION INC.

ACT. | INACT. | ACT. | INACT. | STOP | RX

SUBMITTED BY

McIntire, Agee & Brown 11/21

REMARKS

ADDRESS

802 F. St. N. W.

MONTH OF LAST CALL AND ACCEPTANCE (OR REJECTION)

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19												
19												
19												
19												
19												

STATE D.C. TOWN WASHINGTON ACCOUNT RELIABLE EYE GLASS SHOP

ACTIVE

INACTIVE

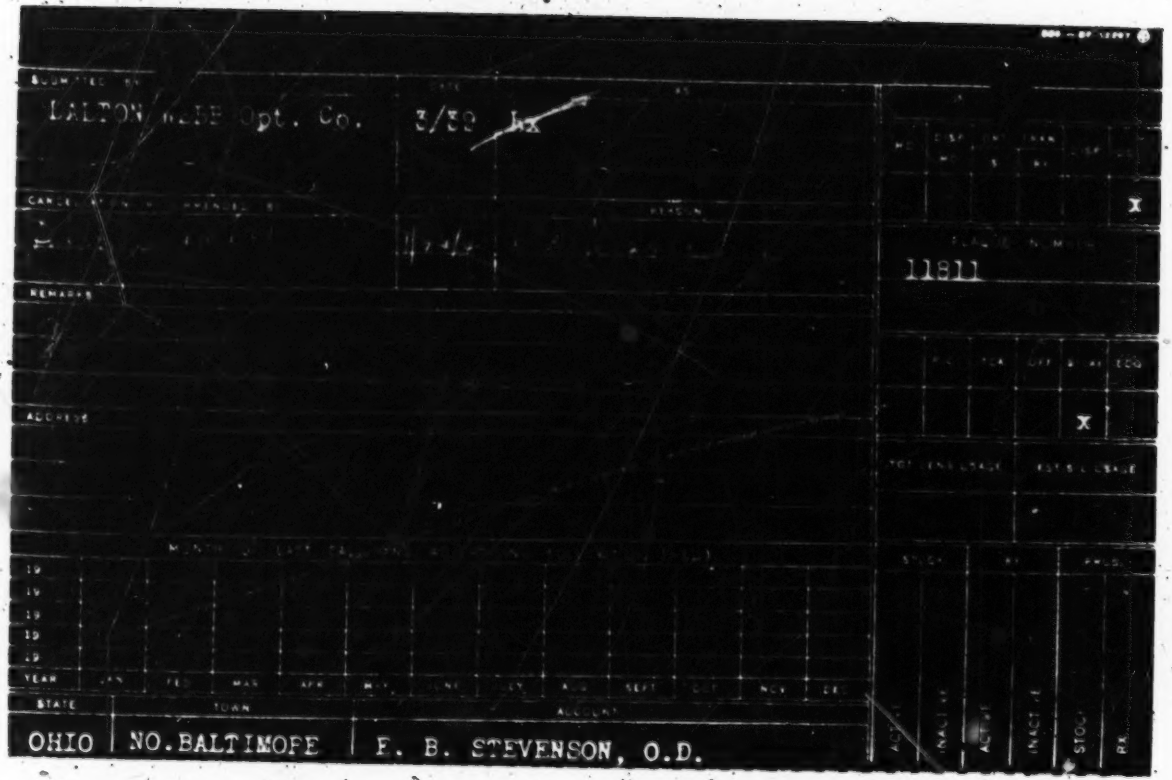
STOCK

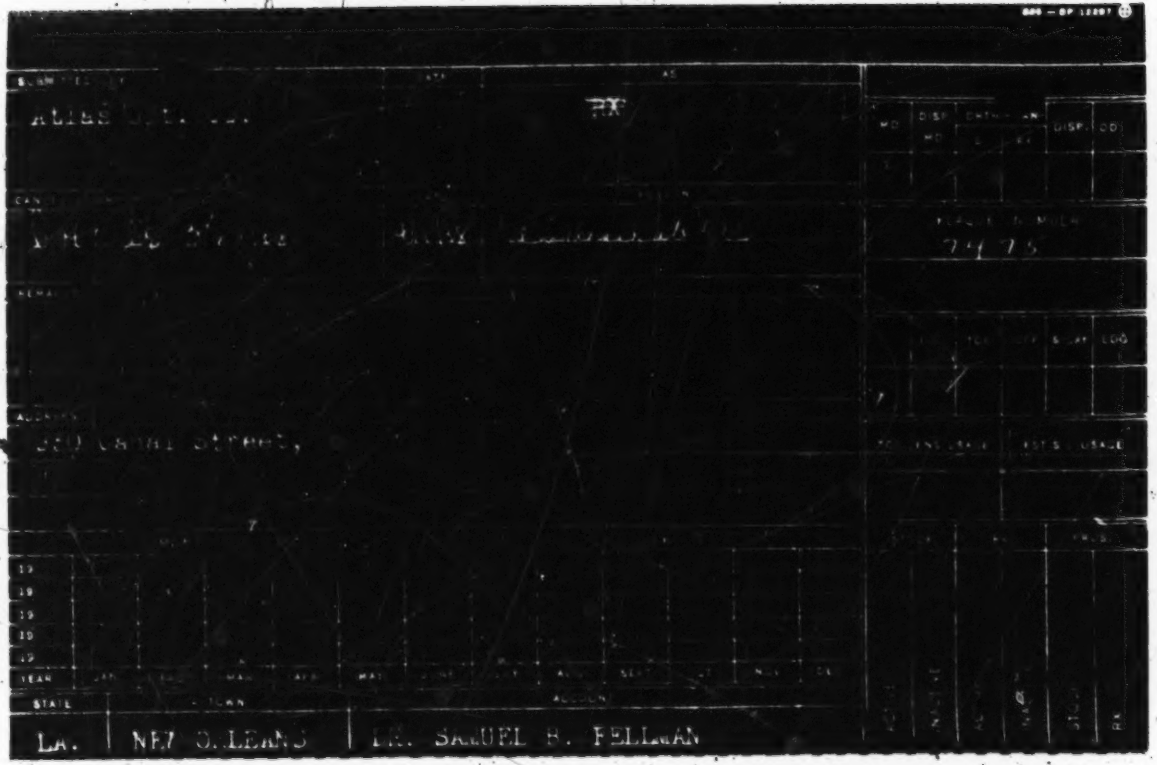
ACTIVE

INACTIVE

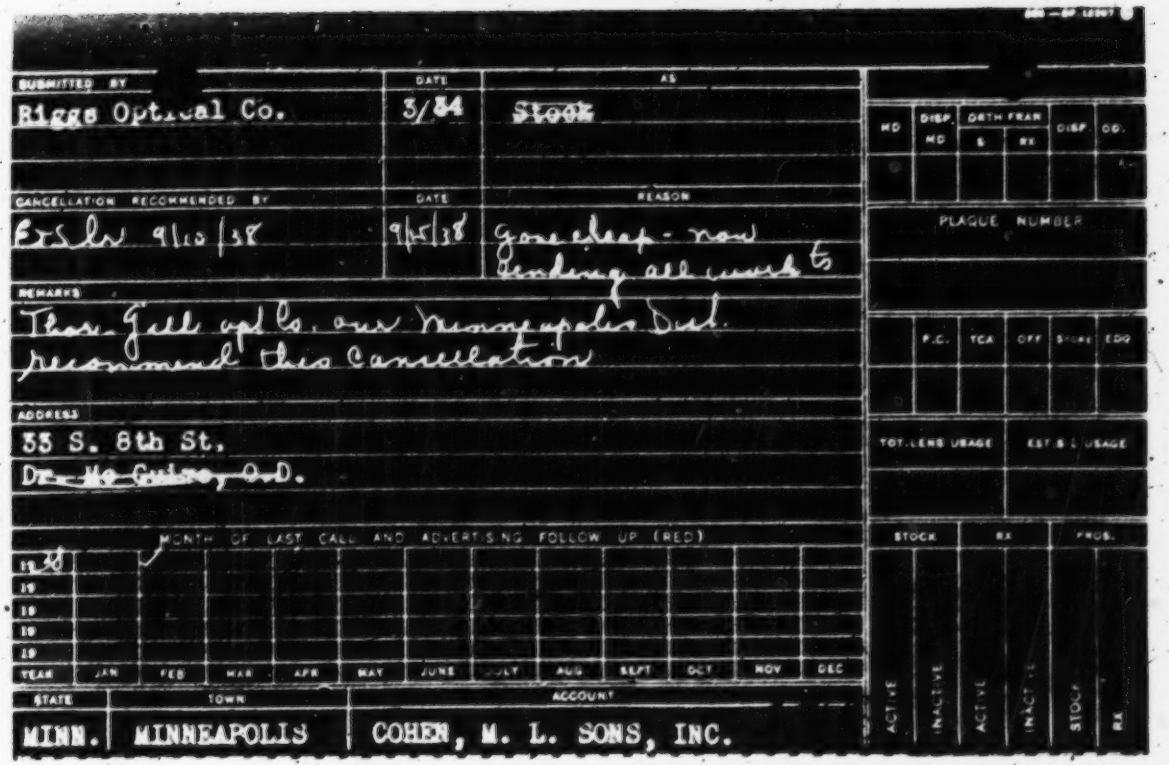
STOCK

RX


LALTON Opt. Co.
11811
OHIO
NO. BALTIMORE
E. B. STEVENSON, O.D.


STATE
LA.
NEW ORLEANS
DR. SAMUEL B. PELLMAN

SUBMITTED BY
Atlas
DATE
11/35
AS
CANCELLATION RECOMMENDED BY
REMARKS
ADDRESS
610 Fremont Street
STATE
LA.
NEW ORLEANS
GEORGE A. UNDERHILL, J. D.



SUBMITTED BY: Riggs Optical Co.
DATE: 3/34
AS: Stock

CANCELLATION RECOMMENDED BY: Ex Slr 9/10/38
DATE: 9/15/38
REASON: Gone cheap - now sending all work to

REMARKS: Thos. Gill upholds our Minneapolis Dist. recommend this Cancellation

ADDRESS: 33 S. 8th St.
Dr. ~~Mc Guire~~, O.D.

MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19 38		✓										
19												
19												
19												
19												

STATE	TOWN	ACCOUNT
MINN.	MINNEAPOLIS	COHEN, M. L. SONS, INC.

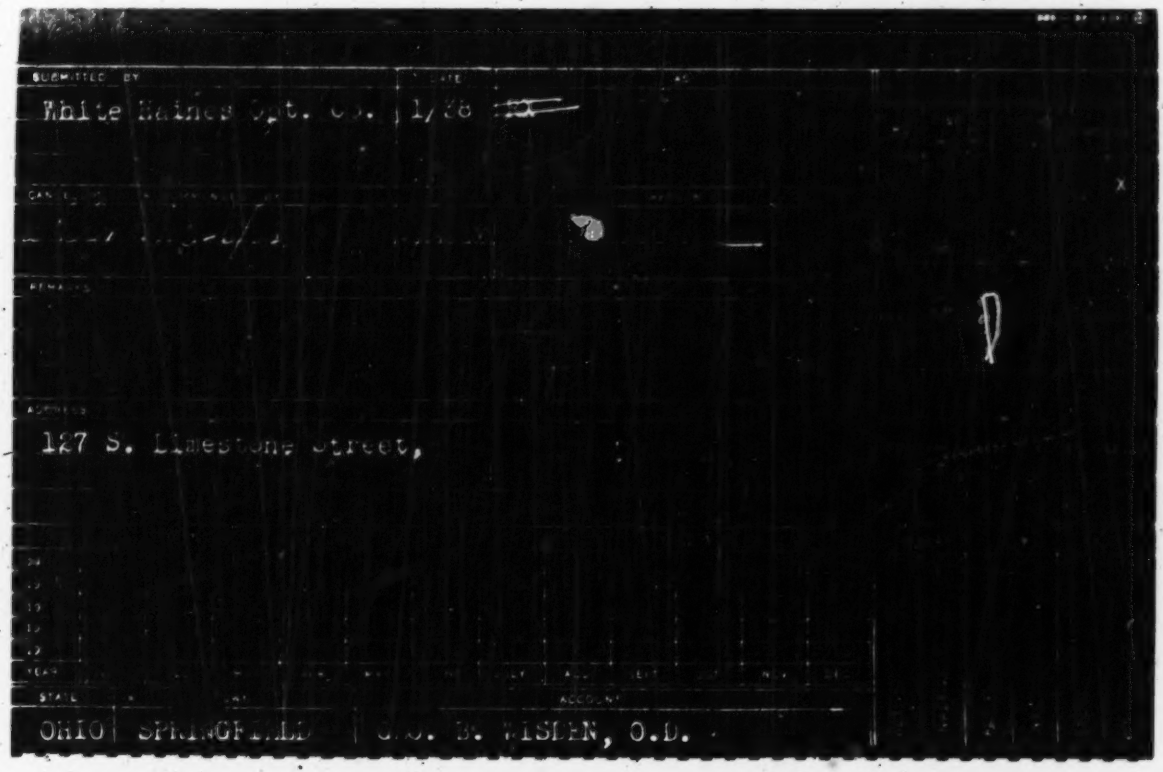
MD	DISP. MD	OPTH FRAM. &	OPTH FRAM. RX	DISP.	OD.

PLAQUE NUMBER

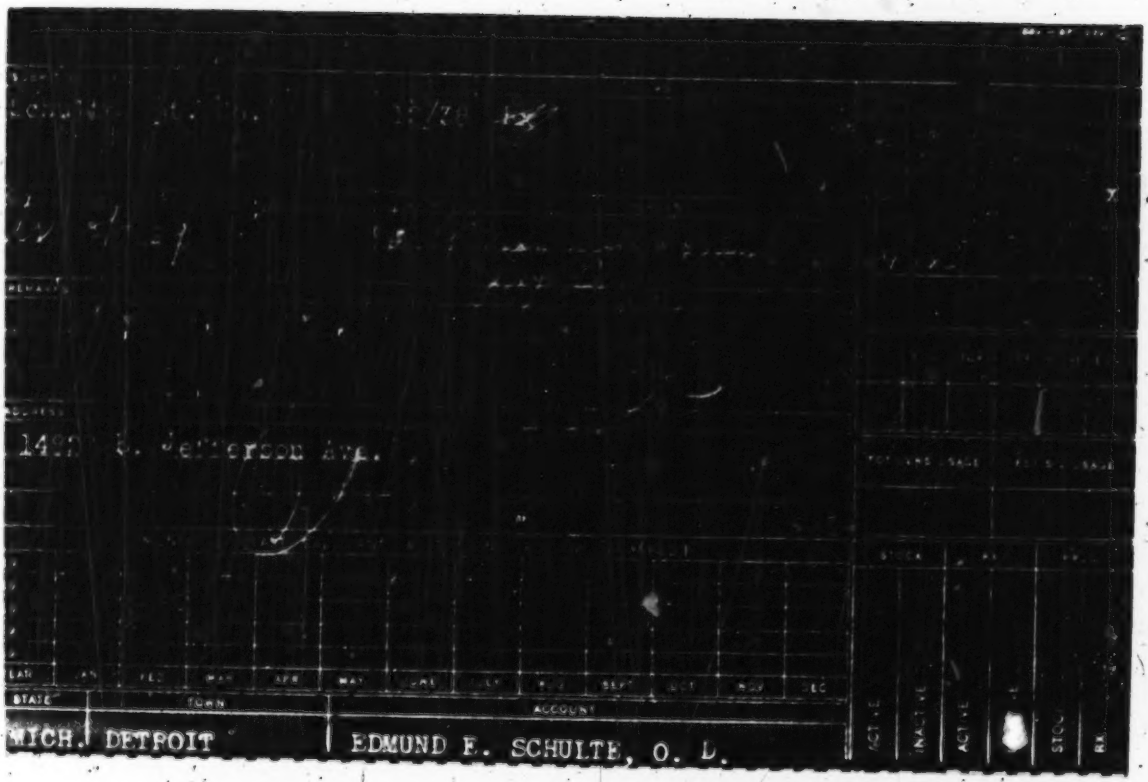
	P.C.	TCA	OFF	SHAPE	EDG

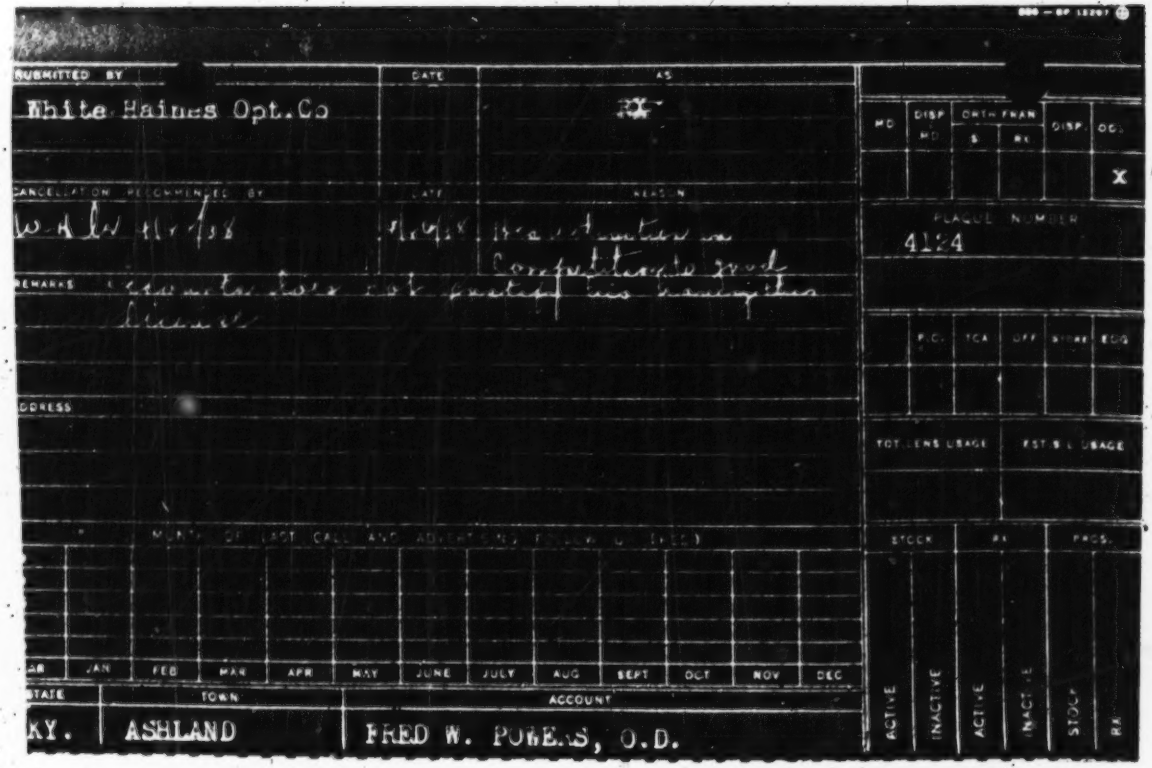
TOT. LENS USAGE	EST. B & L USAGE

STOCK		RX		PROS.	
ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	RX



VISUAL SERVICE CORPORATION 9276


1427 E. Jefferson Ave.
STATE
MICH.
TOWN
DETROIT
ACCOUNT
EDMUND E. SCHULTE, O. D.



SUBMITTED BY: White Haines Opt.Co

DATE:

AS: Rx

CANCELLATION RECOMMENDED BY:

DATE:

REASON: Moved. Re-examination on Completion of work

REMARKS: Examination for partial lens complete

ADDRESS:

MD | DISP MD | OPTH-EXAM $ | OPTH-EXAM Rx | DISP. | OCC. X

PLAQUE NUMBER: 4124

P.C. | TCA | OFF | OTHER | EDG

TOT. LENS USAGE | EST. B. L. USAGE

MONTH OF LAST CALL AND ADJUSTMENT FOLLOW UP (FILE)

LAB	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC

STOCK: ACTIVE | INACTIVE

Rx: ACTIVE | INACTIVE

PROS.: STOCK | Rx

STATE	TOWN	ACCOUNT
KY.	ASHLAND	FRED W. POWERS, O.D.

UNITED STATES BANK & LAMB OPTICAL CO. ET AL. 9705


LA.
NEW ORLEANS

INTERSTATE BAKERIES CORPORATION 1976

SUBMITTED BY: R. J. Reynolds Co.	DATE	AS
CANCELLATION RECOMMENDED BY: R. J. Reynolds Sales Training	DATE: 12-4-58	REASON: T. E.

REMARKS

ADDRESS: 1008 3rd Avenue,

MD	DISP. MD	ORTH FRAN E	ORTH FRAN RX	DISP.	OD.

PLAQUE NUMBER: 6921

	P.C.	TCA	OFF	STORE	EDG
				✓	

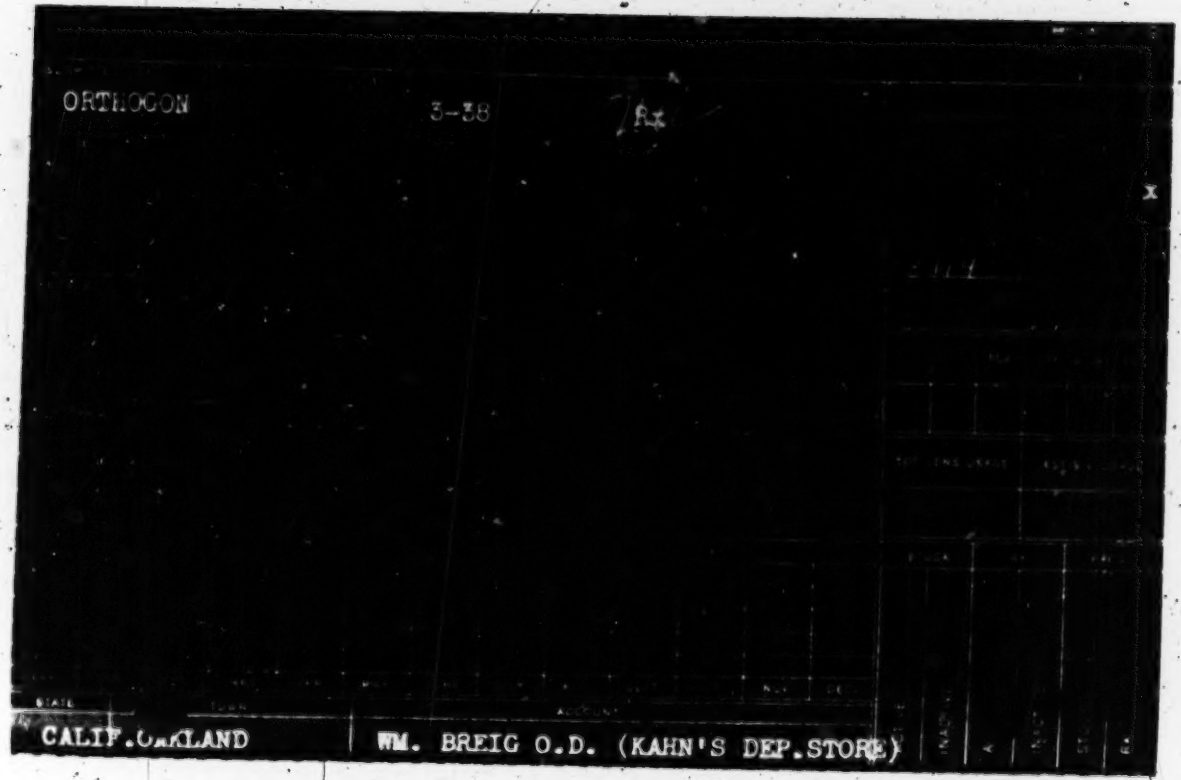
TOT. LEXIS USAGE	EST. B. L. USAGE

MONTH OF LAST CALL AND ADVERTISING FOLLOW UP (RED)

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
19 31				✓				✓				
19												
19												
19												
19												

STOCK		RX		PROG.	
ACTIVE	INACTIVE	ACTIVE	INACTIVE	STOCK	RX

STATE	TOWN	ACCOUNT
CAL.	SAN DIEGO	DR. STANLEY HYMES



920m UNITED STATES U.S. BAUSCH & LOMB OPTICAL CO. ET AL.

SUBMITTED BY
DATE
ADDRESS
496 S. Hill Street,
CITY
CAL.
L.A.
STATE
ACCOUNT
Dr. J. Nolan
ACTIVE
INACTIVE
ACTIVE
INACTIVE
STOCK
RX

1592 *Exhibit 180*

[Copy]

SOFT-LITE LENS CO., INC.
Squibb Building, 745 Fifth Avenue
NEW YORK CITY

MAY 4, 1939.

Mr. A. J. NAUGHTON,
Riggs Optical Company,
8 South Michigan Avenue,
Chicago, Illinois.

DEAR ANDY: As we are endeavoring to trace the source of supply of Soft-Lite Lenses of a very undesirable type of retailer, we would appreciate it very much if you would investigate and advise us the name of the customer to whom you either supplied a pair of semi-finished No. 4 shade Duo-Site bifocal blanks, No. 8100, or to whom you supplied a pair of lenses made from these blanks.

The blanks were ordered by you on April 5th directly from the Bausch & Lomb Optical Company and were billed by us to you on our invoice No. B 21655.

It is possible that the Soft-Lite Licensee, to whom you supplied these lenses or blanks in good faith may have, in turn, either directly or indirectly, been instrumental in placing them into the hands of the non-Licensee, from whom the lenses were purchased during our investigation.

It is obvious, of course, that it is to our mutual interests to try to stop such unauthorized supplying of Soft-Lite Lenses to non-Licensees. We shall appreciate your cooperation very much indeed.

With kindest personal regards,
Sincerely,

SOFT-LITE LENS COMPANY, INC.
(Sgd.) RAY.

R. G. Landis: lck.

P. S. The blanks mentioned above were ordered by your South Halsted office directly from Bausch & Lomb.

1593 *Exhibit 181*

JANUARY 7, 1938.

SOFT-LITE LENS CO., INC.,
Squibb Building, New York, New York.

GENTLEMEN: One of our customers has brought to our attention, that a patient of his purchased from Stern and Company, one of our local credit houses, a pair of Soft-Lite lenses.

They are not licensees, and we cannot understand how they were able to purchase these. The patient requested a certificate, and the doctor stated they did not have any at the time, but would give him one later. Several days after, he called and they gave him a certificate with a number 0844500. Probably you can determine from this where this certificate came from.

We examined the lenses and one eye seemed to be an imitation, the other eye we were rather doubtful, as it appeared to match up with the Soft-Lite lenses.

The prescription was R and L +.50 spherical.

Probably with the above information you can locate something on this.

Very truly yours,

McINTIRE, MAGEE & BROWN CO.

W. H. Ingram: H. B.

1594 *Exhibit 182*

RIGGS OPTICAL COMPANY
Garland Building
CHICAGO ILLINOIS

NOVEMBER 21, 1939.

Mr. R. G. LANDIS,
Soft-Lite Lens Company,
Squibb Building, New York City, N. Y.

DEAR RAY: The Bachman Optical Company of St. Louis, Missouri, apparently has some connection with the Royal Providence Corporation which is operating the old insurance angle on repairs of lenses; however, they have gone a step further and members of the corporation, when purchasing new glasses, are entitled to receive 33⅓% from the established retail prices.

This looks pretty much like a racket, Ray, and we are suggesting that you remove them from the Soft-Lite list. We have evidence which we secured from shoppers, and we feel confident that action should be taken immediately.

With best wishes, remain

Sincerely,

RIGGS OPTICAL COMPANY.
GUS.
A. R. SCHRADER.

ARS/s.
Copied: BP: 11/29.

1595 *Exhibit 183*

NOVEMBER 28, 1939.

Mr. A. R. SCHRADER,
Riggs Optical Company,
58 East Washington Street, Chicago, Illinois.

DEAR GUS: Certainly, the information given to us regarding the Bachman Optical Company, your letter of November 21st, justifies cancellation of their prescription license which we are doing forthwith. They have been an inactive prescription licensee of ours since 1935.

With kind regards,
Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: sk.

1596 *Exhibit 184*

CC: ETS.

FEBRUARY 19, 1940.

Mr. A. R. SCHRADER,
Riggs Optical Company,
58 East Washington Street, Chicago, Illinois.

DEAR GUS: You will remember that you wrote me on November 21st, 1939, advising of the status of The Bachman Optical Company of St. Louis, Missouri, and recommended that their Soft-Lite License be cancelled. Of course, we followed your recommendation and cancelled their license on December 6, 1939.

Strangely enough, we have now received a recommendation card for a Prescription License to be issued to this same account (Dr. Otto Bachman), signed by Bill Lawler of your company. In view of the situation which you reported, there certainly must be something wrong with such a recommendation. Or possibly this whole situation has been cleaned up.

If so, his license ought to be reinstated only upon very definite indications from him that he is going to use a fair amount of Soft-Lites. Under these circumstances, thought I had better refer this matter right back to you.

Shall appreciate your advice.

With kind personal regards,
Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

1597 *Exhibit 185*

RIGGS OPTICAL COMPANY

Distributors of Bausch & Lomb Products

Roco

CHICAGO, ILLINOIS

FEB. 21, 1940.

MR. RAY LANDIS,
Soft-Lite Lens Co., Inc.,
745 Fifth Ave., New York, N. Y.

DEAR RAY: The Bachman Optical Company of St. Louis has severed all connections with that insurance racket, and Dr. Bachman is again operating his practice on the same basis as he was when originally licensed for our various products.

Under the circumstances you may act favorably on the application which you have recently received.

With best wishes, remain
Sincerely,

RIGGS OPTICAL COMPANY.
GUS.
A. R. SCHRADER.

ARS: mo.

1598 *Exhibit 186*

Denver, H. J. Fletcher.
Chgo Main, M. Onsgard.

3-5-40.

DEAR MR. FLETCHER: Some time ago a Soft-Lite Rx application was submitted for A. D. Kleyhauser, O. D., % U. S. Optical Company, Denver, Colorado. Upon checking our records we find that this application was never approved by the Soft-Lite Company. In response to our inquiry regarding this application we have the following reply:

"We regret that you were not advised of the rejection of the Rx application for A. D. Kleyhauser, O. D., U. S. Optical Company, Denver, Colorado, at the time the application was submitted to us. This apparently was an oversight on our part.

However, if you feel that Dr. Kleyhauser is now doing a business in an ethical manner, please send us another application and we will again submit it to our representative."

At the time we submitted this application we advised that the U. S. Optical Company is no longer doing price advertising, and operating in an ethical manner, also that if granted an Rx license they may become a stock licensee in a short time.

Do you wish to submit another application at this time, as suggested by Soft-Lite?

Yours Very truly,

RIGGS OPTICAL COMPANY.
M. ONSGARD.

MO
c. c. Anderegg.
Midwest Dist. Hdqtrs.

1599 *Exhibit 187*

MARCH 29, 1940.

Mr. ROY LANDIS,
Soft-Lite Lens Company,
Squibb Building, New York City, N. Y.

DEAR ROY: Back in 1936 Dr. Harry Beucher was granted a Soft-Lite License through E. W. Reynolds Company. In 1938 you wrote to him and removed him as a licensee but did not give a specific reason.

He has, as you no doubt know, a private optometric practice at 307 Chapman Building and also owns the optical departments in several Sears Roebuck stores.

His private practice is conducted in a very ethical high-class manner and has no direct connection with the Sears Roebuck stores, so he is asking that we use our efforts to have a license granted to him for this practice only.

I have known Harry Beucher for many years and I am sure that when he says he will use Soft-Lite only in his private practice he really means it and will keep his word.

In view of this fact, Roy, I would like you to give him consideration to this extent. I believe he will make a good Soft-Lite user, and it will also help to get Riggs some business we are not getting at present.

Best regards,

RIGGS OPTICAL COMPANY.

W. L. Wood/ap.

1600 *Exhibit 188*

JULY 19TH, 1940.

Mr. R. G. LANDIS,
Soft-Lite Lens Co.,
745 5th Ave., New York City.

DEAR RAY: I was indeed surprised to learn that you had accepted a Soft-Lite license from Dr. H. Beerman, Norfolk, Va., through the Hilbert Optical Co., without consulting us in this matter.

This man conducts an extremely cheap type of business and we are inclined to believe the issuance of a license to Beerman will be a severe blow to our Soft-Lite sales in Norfolk.

Have you adopted a policy of issuing a license to anyone, because if so, we might as well get this type of business as some outside concern.

We will appreciate your advice in this matter, and remain, with kindest regards.

Very truly yours,

THE SOUTHEASTERN OPTICAL CO., INC.

WSG*H.

1601 *Exhibit 189*

OCTOBER 23, 1940.

Mr. M. C. LANDIS,
Soft-Lite Lens Co.,
745 Fifth Ave., New York City.

DEAR RAY: In further reference to our telephone conversation in regard to the issuing of a stock Soft-Lite license to Smith in Bridgeport, we quote from a report sent in by one of our salesmen.

"I understand that Soft-Lite are considering giving Smith, Bridgeport, a stock license.

Here is some information they should have. Smith is doing both wholesale and retail business. Wholesale for some Doctors and Spector's Jewelry Store, where his wife has been working for some time.

He has the reputation of cutting prices, and three or four of our good Soft-Lite users in Bridgeport will not sell anything he sells. Namely, Convard, Brown & Lucier. In view of these facts, I believe it would be a mistake to grant him a stock license."

Our records here do not indicate that the license application came through Colonial. We would like to have complete information covering this license so that we will be able to discuss it with our representative or any of our customers who question the advisability of granting such a license.

Yours very truly,

COLONIAL OPTICAL CO., INC.

Snell/MJ.

1602 *Exhibit 190*

SOFT-LITE LENS CO., INC.
Squibb Building, 745 Fifth Avenue
NEW YORK CITY

MARCH 4, 1938.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Company, Rochester, New York.

DEAR BEN: I received your message last Monday in Chicago regarding the Los Angeles matter via Withy. Thank you very much.

You remember the correspondence which we had last December regarding the Roddy, Kuhl and Ackerman matter in St. Paul. I talked with Withy while I was in Chicago awhile ago and instructed Ed. Summers to look into the matter when he was in St. Paul recently. He did so with the recommendation that we reinstate them on our Stock Licensee list. This recommendation was concurred in by both Jack Coffey, Howard Redline, and Gus Schrader. I discussed the matter with the latter in Chicago last Wednesday. I understand that Bausch & Lomb have referred the matter back to Riggs to take care of themselves, and, so far as we are concerned, and since it is satisfactory to Riggs, we feel that this account should be reinstated.

So far as you are concerned, do you have any reason to differ with us?

Kindest regards.

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: D. R.

1603

Exhibit 191

INTER-OFFICE COMMUNICATION

Date: 3-21-38.

From: Frame Sales Department.
To: Chicago Office.
Subject:
Our Ref.:
Your Ref.:

Attention: Mr. L. I. Withington.

DEAR WITHY: We have checked our records of Roddy, Kuhl and Ackerman of St. Paul, Minnesota, as you requested on my recent trip to Chicago, and find that their Loxit license was cancelled on October 29, 1937. Their Orthogon and Panoptik licenses are still open.

Kindest regards.

BAUSCH & LOMB OPTICAL COMPANY.
By ——— ———.

H. K. Bolles: MS.

1. Original. 2. General Files. 3. Dictator's Copy. 4. Extra Copy.

1604

Exhibit 192

SOFT-LITE LENS CO., INC.

Squibb Building, 745 Fifth Avenue
NEW YORK CITY

MARCH 24, 1938.

File: H. K. B.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Co.,
Rochester, New York.

DEAR BEN: I just noticed that there is a copy of my letter of March 4th to you regarding Roddy, Kuhl and Ackerman still in the pending file.

Very likely you overlooked the matter and so may I ask that you favor us with a reply so we can take care of the matter of this Licensee?

Another copy of the letter in question is attached.

Best regards.

Sincerely,

SOFT-LITE LENS COMPANY, INC.
RAY.

R. G. Landis:lck.
encl.

1605 *Exhibit 193*

MARCH 29, 1938.

Mr. R. G. LANDIS,
Soft-Lite Lens Co. Inc.,
745 Fifth Avenue,
New York, N. Y.

DEAR RAY: Acknowledging your letter of March 24, addressed to Ben, who is out of the city.

We are checking further on the matter of Rody, Kuhl and Ackerman with our Chicago Office, who have the whole thing in hand. We will let you know if there has been any further action taken with this account.

With kind regards, remain,

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
Frame Sales Department.

G. P. Moody:H.

1606 *Exhibit 194*

CANDO, N. D., *September 5, 1939.*

SOFT-LITE LENS COMPANY,
New York City.

DEAR SIRS: We have been informed by patients that Dr. McDonald, M. D., of Cando, N. D., has furnished them with Soft-Lite lenses at $1.50 extra. This has made it bad for us, as we always keep up prices and has been charging $3.00 extra for Soft-Lite lenses.

Yours truly,

O. E. MAUDT, O. D.

1607 *Exhibit 195*

cc: A. R. Schrader.

SEPTEMBER 12, 1939.

Dr. O. E. MAUDT,
Cando, North Dakota.

DEAR DR. MAUDT: We thank you for your letter of September 5th. The matter to which it refers is being referred to our distributors in the territory who will be pleased to take care of the situation. May we thank you for calling it to our attention.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis:sk.

1608 *Exhibit 196*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses—Greater Comfort—Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

SEPTEMBER 12, 1939

Mr. A. R. SCHRADER,
Riggs Optical Company,
1449 Merchandise Mart,
Chicago, Illinois.

DEAR GUS: Enclosed is a letter received from O. E. Mandt, O. D., and our reply.

You will remember that we discussed it while you were here in New York and you were, I believe, to have your salesmen contact Dr. MacDonald and see that the situation is cared for.

With kind regards,

Sincerely yours,

SOFT-LITE LENS COMPANY, INC.,
RAY.

R. G. Landis:sk.
encs.

P. S.—Also enclosed is a copy of a letter which is going to Tex Anderegg today.

1609 *Exhibit 197*

Andy Rosulek.

Chm.
A. R. Schrader.
9/14/39.

DEAR ANDY: The attached correspondence from the Soft-Lite Lens Company is self-explanatory.

Will you please investigate Dr. Mandt's complaint and if it is justified, would suggest that you discuss it with Dr. McDonald so that he will know what is expected in the way of Soft-Lite prices.

With best wishes, remain,
Sincerely,

RIGGS OPTICAL COMPANY.
A. R. SCHRADER.

A. R. S./s.
encl.
nwdh.

1609-A *Exhibit 198*

Andy Rosulek.

Chm.
A. R. Schrader.
10/6/39.

DEAR ANDY: On September 14th, we sent you a letter regarding Dr. Mandt's complaint relative to Dr. McDonald's activities on Soft-Lites.

Have you had an opportunity to see the doctor since that time? Let us hear from you as to when you expect to discuss this subject with the interested parties.

With best wishes, remain,
Sincerely,

RIGGS OPTICAL COMPANY.
A. R. SCHRADER.

ars/s.
nwdh.

1610 *Exhibit 199*

INTER-OFFICE COMMUNICATION

Date: 2/1/39.

From: Withington.
To: Howard Bolles.
Subject: Roddy-Kuhl-Anderson.
Our Ref.:
Your Ref.:

(Attention: File H. K. B.)

HOWARD: As long as these people still have their Loxit License and the machine we should reinstate them from our end and eliminate further detail. Otherwise A. O. Co. will probably share in a Truloc application which we can't refuse.

They own their machine & dont want to change procedure. Let's ship tre new machine to Riggs & they will take it over & bring the old one back.

I have wired Riggs, St. Paul, to withhold action on your letter until further instructions are rec'd.

Wire me tomorrow!

BAUSCH & LOMB OPTICAL COMPANY,

By: WITHY.

1611 *Exhibit 200*

INTER-OFFICE COMMUNICATION

Date: 2/24/39.

From: Withington.
To: Howard Bolles.
Subject: Roddy-Kuhl-Akerman.
Our Ref.:
Your Ref.:

(Attention: File H. K. B.)

HOWARD: I believe you are writing these people a letter indicating they are back on the Loxit List.

I believe I indicated in my report also that they are to have a new machine soon as possible. This is to be sent to Riggs' St. Paul office, and they will install it & pick up the old machine & return it to us.

BAUSCH & LOMB OPTICAL COMPANY,
By: WITHY.

1612 *Exhibit 201*

FEBRUARY 24, 1939.

RODDY, KUHL & ACKERMAN,
18 West Sixth Street, St. Paul, Minnesota.

GENTLEMEN: Several weeks ago, Mr. L. I. Withington, of Bausch & Lomb, Chicago, requested us to send you a new model Loxit machine to replace the one now in your possession. We are sorry that there has been a delay in delivering this machine to you, but we have been confronted with a substantial balance order condition on Loxit machines and probably cannot ship your replacement machine for another two weeks.

Your Loxit license, dated April 9, 1936, has been reinstated on our records, however, and this letter will serve as your notification of reinstatement.

Best wishes for your continued success with Loxit.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
Frame Sales Department.

H. K. Bolles: E. A. C.
cc: Howard Redline.

1613 *Exhibit 202*

BAUSCH & LOMB

OPHTHALMIC LENS SALES DEPARTMENT

AUGUST 15, 1935.

To: Mr. B. A. Ramaker.

Eventually we shall be compelled to do something that will take care of the Soft-Lite lens situation for the future. In the relations between Bausch & Lomb and the Soft-Lite Lens Co. we believe that we have been correct in assuming that the balance of advantage up to the present time has been in favor of our dealing with Nat Singer and the Soft-Lite Lens Co. on the basis that has prevailed for the past several years, but it is our judgment that it is inevitable that this same basis cannot continue indefinitely into the future.

As the sales activities of our own and of our Affiliated Distributors' organizations increase in effectiveness, and particularly as these efforts gain in momentum and direction, the relative weight of the Soft-Lite program in comparison with the whole endeavor must diminish until finally the balance of advantage swings to the other side. This is no disparagement of the work

that has been done in the past by the Soft-Lite Lens Co., but if we are to do our own work effectively the result seems inevitable. Our own sales programs can certainly be expected to occupy more and more of the Distributors' salesmen's attention and energy as time goes on.

It becomes, then, our responsibility to appraise the situation correctly and accurately so that we shall be in a position to be the first to recognize when it becomes advantageous to make the necessary moves with Soft-Lite and shall also be in a position to follow up in the most aggressive way after these moves have been made.

The percentage of Soft-Lite lens sales has grown from 9% to 18% of our total single vision lens business in the past eight years, as shown in the following schedule:

Percentage of Soft-Lite to Total Lens Sales

Year:	Single Vision	Bifocal
1928	8.7	4.1
1929	13.9	8.5
1930	13.8	6.5
1931	16.5	8.8
1932	15.2	7.5
1933	16.7	8.5
1934	18.2	9.1

1614 The important question arises as to whether the gain in Soft-Lite absorption has been made by a conversion to Soft-Lite or normal white lens sales; or has been brought about by a gain by Soft-Lite lens in the colored lens field at the expense of the tinted lens business of competitive lens manufacturers. In either case it is a serious matter to have so large a percentage—18% and still growing—of our lens sales production out of our control. If the gain in Soft-Lite sales is being made at the expense of white lens sales, it is to our disadvantage, whereas if the gain is at the expense of competitive tinted lenses it distinctly is to our advantage.

A very difficult problem from the sales standpoint is presented by the following situation. One of our salesmen has done an outstanding selling job in that he has swung a number of highly desirable retail accounts over from the American Optical Company to our Affiliated Distributor. Now after a period of a couple of years these retail accounts have sat down with him and have compared their operations when trading with the American and with the Affiliated. The analysis shows that their operation has been much less profitable when dealing with the Affiliated Distributor than when dealing with the A. O. Co.; and that the difference in profit is just about equal to the extra price that they have paid for Soft-Lite as compared with what they formerly paid for Cruxite. The question which these accounts now ask is "Isn't

it clear that we would be better off to buy our tinted lenses from the competition; and if it is an advantage for us to do this with our colored lens business, and not a disadvantage insofar as the rest of our purchases are concerned, can you show us why we should use any Bausch & Lomb merchandise? If we split our business and give the colored lens business to the competition and the balance of our business to your Affiliate we know from experience that we cannot expect as good service as we would get if we gave practically all of our business to one source of supply."

The economic justification for the existence of Soft-Lite in the picture has always been that they start with high retail prices and from this develop a price schedule that leaves an attractive profit at every link in the chain of distribution, including the very sizable mark-up in price between our sales price to Soft-Lite at the factory and our purchase price paid to Soft-Lite at distribution.

If the retailers are not able to obtain the high prices listed,
1615 this becomes a matter of vital concern to us as soon as it affects the rest of their purchases of ophthalmic merchandise.

It seems to us that we ought to have a combined price and profit picture at factory and distribution insofar as Soft-Lite operation is concerned. We know certainly that the Soft-Lite stock lens sales policy is no good to the distributor. This means that whatever profit is to be derived from stock sales of Soft-Lite lenses has been extracted before these come into the hands of the distributors—and only a complete analysis of the relative cost and profit relationships can show whether or not the profits from Soft-Lite prescriptions are adequate to carry the stock lenses, and still to leave a satisfactory profit balance in favor of the distributor on his Soft-Lite business. We recommend that such a combined profit picture be prepared, but this must be done in such a way as not to arouse suspicions and antagonisms that might prevent our getting a true picture.

As a product, Soft-Lite has conclusively demonstrated its acceptability to the public. This may be due in part to the fact that the Crookes glass which it supplanted was certainly less pleasing cosmetically than Soft-Lite, and to the added fact that the sales story which had been built up on Crookes could be proved to be untenable.

We now see the phenomenon of a growing appreciation of the cooler shades of tinted glass in preference to the pink and flesh tinted amethyst shades. The expressed preference of Jean Gordon for the Neodymium glass for both blondes and brunettes—based on purely cosmetic considerations—the refusal of such a keen observer as Doctor Louis Jacques of Los Angeles to sponsor an article on Soft-Lite lenses and his willingness to sponsor such

an article on blue lenses—and our own experience with the satisfaction and comfort to be derived from Neodymium glass—all tend to create in our minds a question as to whether or not this indicates a trend that will continue into the future.

All of these considerations show that we cannot depend upon the financial picture by itself to give us the true and complete story. If we should depend upon the factory balance sheet to tell us whether or not it is still the most profitable course for us to pursue, to continue to deal with Soft-Lite on the present basis, we may be misled into missing the opportunity for new developments and for far greater profits.

On the other hand, we must not lose sight of the fact that
1616 the Soft-Lite Lens Co. has done, and is doing, a job with tinted lenses that we would not have done by ourselves, and very likely could not do as well even now; and we are sure to be mistaken if we attach undue significance to the expressed inclinations of some of the people here who are probably more prejudiced than they are informed regarding the situation in its broader aspects.

It is our recommendation that we put ourselves into a position where we will have at our disposal all of the pertinent facts. To this end some sort of a record or file should be developed with complete information of various types; and we should like to discuss the scope of the information to be sought, and how it can be most effectively and economically brought together.

SCOTT STERLING

1617 *Exhibit 203*

BAUSCH & LOMB OPTICAL COMPANY

ANNUAL REPORT—1937

1618 Directors

Edward Bausch, Chairman.
Gordon C. Baird.
Raymond N. Ball.
Carl L. Bausch.
William Bausch.
Theodore B. Drescher.
M. Herbert Eisenhart.
Fred C. Goodwin.
Carl S. Hallauer.
John C. Kurtz.
Carl F. Lomb.
Joseph F. Taylor.

Officers

Edward Bausch, Chairman of the Board.
M. Herbert Eisenhart, President and General Manager.
Carl F. Lomb, Vice President.
William Bausch, Vice President.
Carl L. Bausch, Vice President in Charge of Research and Engineering.
Theodore B. Drescher, Vice President in Charge of Manufacture, and Secretary.
Carl S. Hallauer, Vice President in Charge of Sales.
Joseph F. Taylor, Treasurer and Comptroller.
Edmond S. LaRose, Assistant Comptroller.

Transfer Agent

Lincoln-Alliance Bank and Trust Company, Rochester, New York.

Registrar

Security Trust Company of Rochester, Rochester, New York.

1619 ANNUAL REPORT OF THE BOARD OF DIRECTORS OF BAUSCH & LOMB OPTICAL COMPANY

ROCHESTER, N. Y.,
March 22, 1938.

To the Stockholders:

The Board of Directors presents herewith its annual report including certified financial statements of the Company, consolidated with the wholly owned Domestic and Canadian subsidiaries and controlled distributing companies, for the year ending December 31, 1937.

Inasmuch as the stock of the Company has until early in this year been closely held, this is the first published annual report.

The earnings during the years since the depression have been as follows:

Year	Gross profit	Net profit
1934	$6,044,678	$493,653
1935	7,011,137	889,454
1936	8,163,164	1,030,845
1937	9,067,359	1,067,992

The detailed earnings statement for 1936 and 1937, the analyses of surplus for 1937 and the balance sheet as at December 31, 1937, together with the report thereon by the Auditors for the Company, appear at the end of this report.

The balance sheet gives effect to completion of the capital reorganization authorized and partly completed in December, 1937, and finally completed on January 18, 1938.

The sales volume increased 11.4% over that of 1936, but increased taxes of all descriptions and general wage increases made during the year were contributing factors in substantially increased costs in 1937.

1620 After provision for normal Federal income taxes and surtaxes on undistributed profits, and after deducting interest charges on funded debt and bank loans which have been retired, and minority interests, the consolidated net profit for the year was $1,087,992.18, as compared with net profit of $1,030,845.19 in 1936. After allowance for full annual dividends of $250,000 on the new preferred stock, the earnings applicable to the new Common stock outstanding were $2.04 per share in 1937 as compared with $1.90 per share in 1936.

Total Federal, State and Local taxes, including Social Security taxes, paid or accrued, amounted to $836,838, equal to $144 per employee or $2.04 per share of Common stock in 1937, compared with $595,665 equal to $119 per employee or $1.45 per share in 1936, an increase of 40.5%. Social Security taxes alone in 1937 amounted to $274,420, equal to $.67 per share of Common stock.

CURRENT ASSETS AND LIABILITIES

The current assets at December 31, 1937, were $10,781,245, and current liabilities $1,291,420, a ratio of 8.3 to 1, compared with a ratio of 6.7 to 1 at the close of the previous year.

Cash balances, which are more than equal to total current liabilities, were greatly improved through the recent financing.

The inventories have been valued at the lower of cost or market and the intercompany profits contained in the stocks of the Subsidiary and Affiliated Companies have been eliminated. The substantial increase in inventories during the year is accounted for in part by increased costs resulting from general wage increases made during the year and by the increased volume of sales; the rate of turn-over of inventories to sales was slightly increased as compared with the previous year.

PLANT IMPROVEMENTS

Expenditures during the year for improvements of plant and equipment, including replacements, amount to $822,654. Facilities dismantled upon becoming obsolete or worn out
1621 amounted to $351,970. Current provision for depreciation aggregated $396,468 which has been charged to operations for the year.

CAPITAL CHANGES

Prior to December 1937, the outstanding capitalization of the Company was as follows:

First Mortgage 5% Bonds due May 1, 1942	$1,000,000
First Preferred Stock 6% Cumulative Par $100	2,384,500
Second Preferred Stock 4% Non-Cumulative Par $100	2,000,000
Class A Common Stock No Par	10,000 shares
Class B Common Stock No Par	30,000 shares

In December, the stockholders authorized 60,000 shares of new 5% Cumulative Convertible Preferred Stock of the par value of $100 per share, the reclassification of the above Second Preferred Stock and Class A and Class B Common Stocks into 360,000 shares of Common Stock of the par value of $10 per share, and an additional 340,000 shares of the new Common Stock. Under an exchange offer, $453,000 par value (4530 shares) of the new Preferred Stock was issued for a like face value of First Mortgage Bonds, and 19,290 shares of the new Preferred Stock were issued for a like number of shares of First Preferred Stock.

In January 1938, the Company offered to the public through underwriters 26,180 shares of the new Preferred Stock at par and 50,000 shares of the new $10 par Common Stock at $20 per share. From the proceeds of the sale of these securities, the Company redeemed the remaining outstanding First Mortgage Bonds and First Preferred Stock. The remaining net proceeds amounting to approximately $2,325,000 were added to working capital, $1,100,000 thereof being applied to the liquidation of bank indebtedness. After completion of this recapitalization plan, the outstanding capitalization of the Company is as follows:

1622 50,000 shares Convertible Preferred Stock, 5% Cumulative, Par Value $100	$5,000,000
410,000 shares Common Stock, Par Value $10	4,100,000

The effect of these changes has been to eliminate funded debt, increase working capital, simplify the capital structure and to reduce the annual charges taking precedence over Common dividends to $250,000. These charges, including sinking fund of $100,000 on the retired bonds, aggregated $435,000 in 1937.

STOCK OWNERSHIP

Immediately preceding the recapitalization plan, ownership of the Company's stock was confined to members of the Bausch and Lomb families, employees, and some of the principal officers of affiliated distributor companies. In connection with the recent recapitalization, the members of the Bausch and Lomb families exchanged their entire holdings for the new securities of the Company, and the aggregate amount of stock held by management and employees was substantially increased by purchase.

PROPERTY

The principal plants, all of which are located in Rochester, New York, consist of 29 buildings, having over 1,000,000 square feet of floor space, more than 60% of which is in buildings of steel, brick and concrete fire proof construction, and over 30% is in buildings of mill construction. The Company and its subsidiaries own several other parcels of real estate, but in general follow the practice of leasing office and other space for their business outside of Rochester.

HISTORY

Since this is the first report of the Company to be published, it has seemed to the Board of Directors desirable to include for the benefit of the new stockholders a brief historical outline.

The business, founded in 1853 by John J. Bausch, who was joined shortly thereafter by Henry Lomb as a partner, was confined in its early stages to the sale of foreign-made spec-
1623 tacles. The business soon developed to include the hand manufacture of both frames and lenses. The first machine for the production of spectacle lenses was built in 1860. In 1874, Edward Bausch, eldest son of John J. Bausch and now Chairman of the Board of Directors, joined the business, and in 1876 started the manufacture of scientific instruments with the production of the first American-made microscope. In 1883, photographic lenses were added. Since that time, the inclusion of new lines of manufacture has kept pace with the requirements of the scientific world and the Company now produces in addition to its ophthalmic products over 3000 instrument items, including microscopes, optical measuring instruments for industrial inspection and control and for chemical laboratories, photomicrographic equipment, reflectors, binoculars, spotting telescopes, projection apparatus, rangefinders and other optical control instruments.

Prior to the World War, there was no optical glass manufactured commercially in the United States. During the World

War, working in conjunction with experts of the U. S. Government and of the Carnegie Institute, the Company undertook the manufacture of optical glass and now produces in its own glass plant various types of optical glass for its scientific instruments, as well as its entire requirements for spectacle lenses.

PRODUCTS

The principal products of the Company are classified under the following general headings:

Ophthalmic

Ophthalmic products, which include lenses, frames, and mountings for spectacles, and instruments for eye testing, are sold through a substantial list of independent wholesale houses throughout the United States and Canada. In addition, these products are sold through six wholesale distributors in which the Company owns a controlling stock interest. These distributing subsidiaries (listed below) have over 165 branches, located in principal trading areas, through which they render a
1624 complete optical service over the entire United States:

Colonial Optical Company, Inc., New York, N. Y.
McIntire, Magee and Brown Company, Philadelphia, Pa.
Riggs Optical Company-Consolidated, Chicago, Ill.
Riggs Optical Company, Inc., San Francisco, Cal.
The Southeastern Optical Company, Incorporated, Richmond, Va.
The White-Haines Optical Company, Columbus, Ohio.

Instrument

The scientific instruments mentioned are sold through branch offices located in:

New York.	Washington.
Chicago.	Boston.
San Francisco.	Philadelphia.
Los Angeles.	

through an extensive list of dealers, and directly to educational and industrial institutions.

Military

Though the volume of sales is not comparable to that of the other two classes of products, it is an important fact that the Company is and has been for many years one of the principal suppliers of rangefinders, gun sights, periscopes and other op-

tical fire control instruments for naval and military use. While the manufacture of this line is carried on in regular departments of the business, the nature of the products is such that an especially trained corps of technicians is required. These products constitute an essential element in the National Defense Program and their production has been, for more than 25 years, constantly under the supervision and inspection of resident representatives of the Navy Department.

RESEARCH

Conscious of the fundamental importance in the field of public health and general scientific investigation of the type of
1625 products and equipment manufactured, the Company maintains an engineering and research division whose task is the development of new types of apparatus in the general optical field, the appraisal of contemporary optical developments and the extension of the use of optical instruments.

EMPLOYMENT AND WELFARE

Over a long period of years, the Company has enjoyed an unusually happy Employer-Employee relationship. The precise nature of its product requires the most highly skilled workmen and, in many instances, years of special training are necessary. To a considerable extent, the high quality achieved may be attributed to the loyalty and fidelity of the employees and to their pride in their reputation for fine workmanship. A program of training and education along technical lines, both in the plant and in schools having the necessary facilities, is constantly carried on. Group life and accident insurance have been made available by the Company for all of its employees and, in 1927, the Bausch & Lomb Foundation was established for the purpose of assisting needy employees and their dependents. Approximately 3800 people are employed in the factory and offices at Rochester, New York, and approximately 2000 in the branch offices and affiliated distributing units. The labor turnover is comparatively small and there are, in fact, over 300 members of the Early Settlers Organization whose eligibility requirement is 25 years of service.

The Board of Directors acknowledges with appreciation the continued loyal and efficient service of the employees of the Company and its subsidiaries.

For the Board of Directors,

EDWARD BAUSCH,
Chairman.

M. HERBERT EISENHART,
President.

1626 BAUSCH & LOMB OPTICAL COMPANY AND SUBSIDIARY COMPANIES (U. S. A. AND CANADA)

Consolidated Balance Sheet, December 31, 1937

(Giving effect to the completion of capital reorganization authorized and partly completed in December, 1937, and finally completed January 18, 1938)

ASSETS			
Current Assets:			
Cash in banks and on hand		$1,660,104.55	
Marketable securities, at or below cost, including $25,000.00 of United States Government securities pledged to secure bank loans (Quoted value at December 31, 1937—$34,850.00)		34,783.77	
Notes and accounts receivable—			
Installment notes and accounts	$255,377.63		
Other trade notes and accounts	2,044,484.87		
	2,299,862.50		
Less—Reserves for doubtful notes and accounts and discounts	396,464.60		
		1,903,397.90	
Inventories of raw materials and supplies, work in process and finished product, as determined and certified by responsible officials, at the lower cost or market		7,182,959.05	
			$10,781,245.27
Investment in and Advances to Bausch & Lomb Optical Company, Limited (London), a wholly owned subsidiary			118,327.27
Other Assets:			
Customers' notes and accounts receivable, not current	279,985.15		
Less—Reserve	79,664.24		
		200,320.91	
Officers' and employees' notes and accounts receivable—			
Due under stock purchase plan, secured by capital stocks of subsidiary companies	138,032.25		
Miscellaneous (including traveling advances, $14,173.01)	74,372.72		
		212,404.97	
Sundry investments		131,771.11	
			544,496.99
Capital Assets:			
Land, buildings, machinery, equipment, etc., at cost	8,863,304.57		
Less—Reserve for depreciation	4,205,342.97		
		4,657,961.60	
Patents, less amortization		22,941.18	
			4,680,902.78
Deferred Charges to Operations:			
Unexpired insurance		87,852.43	
Unamortized leasehold improvements		26,877.06	
Miscellaneous		27,158.25	
			141,887.74
			16,266,860.05

LIABILITIES

Current Liabilities:			
Notes payable		$190,000.00	
Accounts payable		488,420.61	
Accrued salaries, wages, commissions, taxes, etc		287,092.89	
Provision for Federal income and undistributed profits taxes		325,806.84	
			$1,291,419.84
Mortgages on Real Estate			15,000.00
Reserves for Contingencies			64,914.56
Minority Interest in Subsidiary Companies:			
Preferred stocks		268,150.00	
Common stock and surplus		713,750.37	
			981,900.37
Capital Stock and Surplus:			
Convertible preferred stock, par value $100 per share (5% cumulative)—			
Authorized—60,000 shares	$6,000,000.00		
Issued—50,000 shares		5,000,000.00	
Common stock, par value $10 per share—			
Authorized—700,000 shares	7,000,000.00		
Issued—410,000 shares		4,100,000.00	
Capital surplus, per statement attched		2,622,485.92	
		11,722,485.92	
Earned surplus, per statement attached		2,191,139.36	
			13,913,625.28
			16,266,860.05

1628 BAUSCH & LOMB OPTICAL COMPANY AND SUBSIDIARY COMPANIES (U. S. A. AND CANADA)

CONSOLIDATED STATEMENT OF PROFIT AND LOSS

For the Two Years Ending December 31, 1936 and 1937

Particulars	1937	1936
Gross profit from operations before deducting depreciation and expenses shown below	$9,087,358.73	$8,163,164.17
Deduct:		
Provision for depreciation	396,468.46	386,484.28
Selling, general and administrative expenses	7,193,528.80	6,407,424.22
	7,589,997.26	6,793,908.50
	1,497,361.47	1,369,255.67
Other income	171,042.55	179,965.58
	1,668,404.02	1,549,221.25
Deduct:		
Interest charges	74,831.31	70,547.26
Provision for contingencies and miscellaneous charges	38,026.85	4,030.36
Provision for Federal and Canadian income taxes	234,036.82	235,121.05
Provision for Federal surtax on undistributed profits	88,857.93	80,916.51
	435,752.91	390,615.18
Net profit before deducting minority interests therein	1,232,651.11	1,158,606.09
Deduct:		
Minority interests in net profits of subsidiary companies, including dividends on preferred stocks of these companies	144,658.93	127,760.90
Net profit for the year	1,087,992.18	1,030,843.19

1629

BAUSCH & LOMB OPTICAL COMPANY

AND SUBSIDIARY COMPANIES (U. S. A. AND CANADA)

CONSOLIDATED STATEMENT OF EARNED SURPLUS

For the Year Ending December 31, 1937

(Giving effect to the completion of capital reorganization authorized and partly completed in December 1937, and finally completed January 18, 1938)

Balance, December 31, 1936			$1,787,947.42
Net profit for the year ending December 31, 1937, per statement attached			1,087,992.18
			2,875,939.60
Deduct:			
Adjustment of capital asset accounts of certain subsidiaries to cost basis		$71,593.59	
Premium on bonds purchased and retired		13,675.00	
Miscellaneous charge, net		7,943.65	
Dividends paid—			
First preferred—$8.00 a share	$191,588.00		
Second preferred—$4.00 a share	80,000.00		
Common—"A"—$8.00 a share	80,000.00		
Common—"B"—$8.00 a share	240,000.00		
		591,588.00	
			684,800.24
Balance, December 31, 1937			2,191,139.36

CONSOLIDATED STATEMENT OF CAPITAL SURPLUS

For the Year Ending December 31, 1937

(Giving effect to the completion of capital reorganization authorized and partly completed in December 1937, and finally completed January 18, 1938)

Balance, December 31, 1936		$1,000,000.00
Amounts transferred from Capital Stock account in December 1937 in connection with:		
Retirement and cancellation of Class B Common Stock theretofore held in Treasury	$1,000,000.00	
Reclassification of Second Preferred Stock, Class A Common Stock and Class B Common Stock, with an aggregate stated or par value of $4,000,000, into new Common Stock with an aggregate par value of $3,600,000	400,000.00	1,400,000.00

Excess of proceeds from sale of 50,000 shares of new Common Stock over par value thereof		$500,000.00
		2,900,000.00
Deduct:		
Premium on First Preferred Stock purchased and retired	$45,550.00	
Underwriters' fees and other expenses (in part estimated) in connection with sale of Preferred and Common Stock	231,964.08	277,514.08
Balance, December 31, 1937		2,622,485.92

1630 PRICE, WATERHOUSE & Co.

Rand Building

BUFFALO, N. Y.

MARCH 7, 1938.

To the Board of Directors of Bausch & Lomb Optical Company:

We have made an examination of the consolidated balance sheet of Bausch & Lomb Optical Company and subsidiary companies (U. S. A. & Canada) as at December 31, 1937, and of the consolidated statements of profit and loss, earned surplus and capital surplus for the year 1937. In connection therewith, we examined or tested accounting records of the companies and other supporting evidence and obtained information and explanations from officers and employees of the companies; we also made a general review of the accounting methods and of the operating and income accounts for the year, but we did not make a detail audit of the transactions.

In our opinion, based upon such examination, the accompanying consolidated balance sheet and related statements of profit and loss, earned surplus and capital surplus fairly present, in accordance with accepted principles of accounting consistently maintained by the companies during the year under review, the position of the combined companies at December 31, 1937, and the results of their operations for the year.

PRICE, WATERHOUSE & Co.

1631 *Exhibit 204*

WHOLESALERS

Philip Apffel Co., Inc., 199 Fulton St., New York, N. Y.
Atlas Optical Company, 512 Maritime Bldg., New Orleans, La.
Bartels Optical Co., 25 E. Washington St., Chicago, Ill.
Belgard, Inc., and Branches, 6 N. Michigan Ave., Chicago, Ill.
Belgard-Spero, Inc., and Branches, 30 N. Michigan Ave., Chicago, Ill.

N. P. Benson Opt. Co., Inc., and Branches, Medical Arts Bldg., Minneapolis, Minn.

Berks Optical Company and Branches, 49 North 7th St., Reading, Pa.

Binghamton Optical Co., 212 Press Bldg., Binghamton, N. Y.

Bishop Optical Company, Bland Street, Bluefield, W. Va.

Blue Grass Optical Co., 145 N. Upper St., Lexington, Ky.

Boll-Lewis Optical Co., 8 S. Michigan Blvd., Chicago, Illinois.

Bradley Optical Company and Branches, 424 S. Broadway, Los Angeles, Cal.

Brent Optical Company, 1114 Twelfth St., Altoona, Pa.

Brooks Optical Co., Nix Professional Bldg., San Antonio, Texas.

Burleigh Optical Co. and branch, 166 Main St., Tilton, N. H.

C. C. Caldwell Opt. Co., 603 Bryant Bldg., Kansas City, Mo.

Charles E. Carlson, Inc., 76 Willoughby St., Brooklyn, N. Y.

Central States Opt. Co., 5 S. Wabash Ave., Chicago, Illinois.

City Optical Co. and Branches, 207 Front St. N., Wilmington, N. C.

Clinton Optical Co., Inc., 36 N. Clinton Ave., Rochester, N. Y.

Colonial Optical Co., Inc., and Branches, 62 West 47th St., New York City.

Connecticut Optical Co., 108 Bank St., Waterbury, Conn.

Dalton-Webb Optical Co., 610 Edison Bldg., Toledo, Ohio.

Dando & Fadden, Inc., 2nd Fl., Cornell Bldg., Scranton, Pa.

1632 Dempsey Optical Co. and Branch, 260 Spitzer Bldg., Toledo, Ohio.

DeWein Optical Co., 47 W. Huron St., Buffalo, N. Y.

Diederich Optical Co., Inc., 629 S. Hill St., Los Angeles, Cal.

Dorr Optical Co. and Branch, 9395 Wilshire Blvd., Beverly Hills, Cal.

Dow Optical Co. and Branch, 30 N. Michigan Ave., Chicago, Ill.

Duning Optical Co., 726 Main St., Richmond, Ind.

Edelstein Bros., 144 S. Warren St., Syracuse, N. Y.

Ft. Wayne Optical Co., 124 W. Wayne St., Ft. Wayne, Ind.

Fox Optical Co., 303 Lemcke Bldg., Indianapolis, Ind.

Arthur Frank & Co., 71 Nassau St., New York, N. Y.

Louis Friedlander, Inc., 71 Nassau St., New York, N. Y.

Geneva Optical Company, 43 Seneca St., Geneva, N. Y.

O. H. Gerry Optical Co., 221 Professional Bldg., Kansas City, Mo.

Gracy-Wolf Optical Co., 117 S. Main St., Akron, Ohio.

Gregory Optical Co., 214 Rogers Bldg., Jackson, Mich.

Joseph Greiff, Inc., 894 Willoughby Ave., Brooklyn, N. Y.
Henry Hennessey, Pere Marquette Bldg., New Orleans, La.
Hilbert Optical Co. and Branch, 300 Park Ave., Baltimore, Md.
A. E. Holden, 62 Main St., Houlton, Maine.
Hooker Optical Co., 206 Lincoln Bldg., Watertown, N. Y.
Houchin Optical Co., 881 Broad St., Newark, N. J.
Hudson Valley Opt. Co., 11 Cannon St., Poughkeepsie, N. Y.
Hygrade Optical Co., Inc., 30 E. 23 St., New York, N. Y.
Jenkel-Davidson Opt. Co. and Branches, 366 Post St., San Francisco, Cal.
1633 Johnston Optical Co. and Branches, 7th Fl. Industrial Bank Bldg., Detroit, Mich.
Kalamazoo Optical Co., American Nat. Bk. Bldg., Kalamazoo, Mich.
F. W. King Optical Co., 510 Euclid Arcade, Cleveland, Ohio.
Kirkland Optical Co., 8 Devereaux St., Utica, N. Y.
Kirstein Optical Co., 132 Andrews Street, Rochester, N. Y.
Klauer Optical Co., 405 Dubuque Bldg., Dubuque, Iowa.
L. H. Kosh & Co., 106 Fulton St., New York City.
Knoxville Optical Dispensary, 703 Market Street, Knoxville, Tenn.
Lantz Optical Co., St. Mary's Building, St. Cloud, Minn.
Lehigh Optical Co., 728 Hamilton St., Allentown, Pa.
Lehmann Optical Co., Inc., 21 W. 46th St., New York, N. Y.
Robert Levin, Inc., 50 W. 29th St., New York City.
J. E. Limeburner Co. and Branches, 1923 Chestnut St., Philadelphia, Pa.
Linden Optical Co., 45 N. 9th St., Allentown, Pa.
Littlewood Optical Co., 39 Market Street, Amsterdam, N. Y.
Maves Optical Co. and Branch, 15A N. Third St., Grand Forks, N. D.
Mayer Brothers, 3rd Ave. at Union St., Seattle, Wash.
McClenaghen Opt. Co., 825 Walnut St., Philadelphia, Pa.
Fred H. McGary Optical Co. and Branch, 162 French St., Bangor, Maine.
McIntire, Magee & Brown Co., Inc., and Branches, 9th & Sansom Sts., Philadelphia, Pa.
McLeod Optical Co. 357 Westminster St., Providence, R. I.
Miller Optical Co., 5 S. Wabash Ave., Chicago, Illinois.
Milwaukee Optical Mfg. Co., 208 E. Wisconsin Ave., Milwaukee, Wis.
August Neuse & Co., 35–43 E. 125th St., New York City.
1634 Newman Brown Opt. Co., Inc., 407 Crosby Bldg., Buffalo, N. Y.
Niagara Optical Co., 501 Washington St., Buffalo, N. Y.
H. D. Palmer Co., 5 N. Wabash Avenue, Chicago, Illinois.

Paramount Optical Co. and branch, 33 Monument Circle, Indianapolis, Ind.

Philadelphia Optical Co. and branch, 221 N. 12th St., Philadelphia, Pa.

Physicians Optical Co., 6th & Nebraska St., Sioux City, Iowa.

Potter & Schnackenberg, 20 West 47th St., New York City.

Quinton-Duffens Optical Co. and Branches, 829 Kansas Ave., Topeka, Kansas.

Ray Optical Co., 124 Lisbon Street, Lewiston, Maine.

Reading Optical Co., 706 Walnut Street, Reading, Pa.

Reese Optical Co., 505 Richland Trust Bldg., Mansfield, Ohio.

Riggs Optical Company and Branches, 58 E. Washington St., Chicago, Illinois.

Riggs Optical Company and Branches, Flood Building, San Francisco, Cal.

Schroeder-Miller Opt. Co., 7 W. Madison St., Chicago, Illinois.

Joseph Schwartz, Ltd., Wolters Bldg., Honolulu, T. H.

Seidel Optical Service, 232 Madison Ave., New York, N. Y.

Silbert Optical Co. Franklin & Huron Sts., Buffalo, N. Y.

Southeastern Optical Co., Inc., and Branches, 212 E. Franklin St., Richmond, Virginia.

Southerland-Helms Co., Professional Bldg., Charlotte, N. C.

Southwest Optical Co., 432 Granger Bldg., San Diego, Cal.

Southwest Optical Co., W. P. Story Building, Los Angeles, Cal.

Spratt Optical Co. and Branches, 358 Roosevelt Bldg., Los Angeles, Cal.

1635. G. & F. Stannard Co., 31 E. Fourth St., Cincinnati, Ohio.

M. E. Stern & Co., 71 Nassau Street, New York, N. Y.

Superior Optical Co. and Branches, 727 W. Seventh St., Los Angeles, Cal.

Taylor Optical Co., Inc., 318 Michigan Bldg., Detroit, Mich.

Tennessee Optical Co., Empire Building, Knoxville, Tenn.

Twin City Optical Co., Donaldson Bldg., Minneapolis, Minn.

Twin Ports Optical Co., Medical Arts Bldg., Duluth, Minn.

Uhlemann Optical Co. and Branches, 55 E. Washington St., Chicago, Illinois.

Wallace Optical Company, 605 City Nat. Bldg., Lansing, Mich.

Walman Optical Co. and Branches, Medical Arts Bldg., Minneapolis, Minn.

J. A. Weiss & Sons, Inc., 24 Dexter Ave., Montgomery, Ala.

Western Optical Co. and Branches, Kearns Bldg., Salt Lake City, Utah.

White-Haines Opt. Co. and Branches, 82 N. High Street, Columbus, Ohio.

Wilson & Halford Opt., 387 Washington St., Boston, Mass.

Winchester Optical Co. and Branches, 402 Franklin St., Horseheads, N. Y.
York Optical Co. and Branches, 27 W. King Street, York, Pa.

1636 *Exhibit 205*

AUGUST 13, 1937.

Mr. R. G. LANDIS,
Soft-Lite Lens Company,
745 Fifth Avenue, New York City.

DEAR RAY: I have your letter of August 11th in which you ask if it is customary to sell at less than the established prices to regular dealers in case of government orders.

So far as I know, it certainly is not the usual thing to sell at less than regular prices—but in this particular case it looks as if it is a matter of meeting the $8.00 price for tinted Univis lenses, or of going without the business.

The School of Aviation Medicine have been getting along with the $8.00 Univis lenses, but according to Otis Mason they would be glad to change to Soft-Lite Panoptiks if they can do so without increasing the price that they pay. They say that the reason why they canont pay $8.25 for Soft-Lite Panoptiks is because there would be an unsurmountable amount of red tape involved in making the change to a higher priced item.

This is the question: Will you or we authorize Otis Mason to meet the $8.00 net price?

	Per pair
The list price for Ax Semi-finished is	$7.25
Special location of segment	1.25
For Soft-Lite glass	2.50
Total	11.00

When these are sold at 25% discount, the net price is $8.25. If we could reduce the list price 35¢, either by charging $2.15 list instead of $2.50 list as the Soft-Lite extra, or 90¢ list instead of $1.25 list for the special position of the blank, Mason could meet the $8.00 competitive price.

If you feel that you do not wish to make any concession on the Soft-Lite extra, my inclination would be to charge
1637 90¢ list for special position of the segment in this particular instance, and thus enable Mason to get this business. However, I will not advise Mason to this effect until I hear from you, because if we authorize him to meet the $8.00 price, we want it understood that the net price at which these lenses are billed to him must be not higher than $6.40.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

S. Sterling: M. C.

1638 *Exhibit 206*

United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF

v.

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, R. G. LANDIS, MORRIS SINGER, DEFENDANTS

Stipulation—Civil Action No. 10-393

The matters set forth below are hereby stipulated and agreed by and between the attorneys for the plaintiff and the attorneys for the defendants, Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor, subject to the following conditions:

1. This stipulation and any and all of the matters contained herein are subject to objection on the ground of incompetence, immateriality, and irrelevancy and may be included in any motion to strike heretofore or hereafter made in the above-entitled action on behalf of the above-named defendants.

2. Neither this stipulation nor any of the matters herein contained is evidence or admission for any other purpose or purposes whatsoever except for the purposes of this case; is not to be used in any other action or proceeding for any purpose whatsoever; and, if any finding, decree, or opinion (if there are no findings of fact) made herein is based upon this stipulation or upon any of the matters contained herein, such finding, decree, or opinion shall refer to this stipulation and to all of
1639 the conditions contained herein, and such finding, decree, or opinion shall not be used in any other action or proceeding and shall not be deemed evidence, admission, or adjudication in any other such action or proceeding upon the subject matter of this stipulation.

3. The term "Bausch & Lomb products" as used below shall not be deemed to include Soft-Lite lenses, either in unfinished, semi-finished, or finished form; it is stipulated and agreed, however, that such Soft-Lite lenses are manufactured by Bausch & Lomb Optical Company and sold to Soft-Lite Lens Company, Inc., which, in turn, sells them to optical wholesalers, including the optical wholesale companies named and described below.

"PARAGRAPH ONE. Bausch & Lomb Optical Company (hereinafter referred to as "Bausch & Lomb") is a corporation organized,

existing, and doing business under and by virtue of the laws of the State of New York, with main offices and factories located at Rochester, New York. Said company is now, and for many years has been, engaged in the business of manufacturing, distributing, and selling, among other things, a complete line of ophthalmic merchandise and optical goods, including lenses, frames, and mountings for eyeglasses, scientific instruments for eye testing, cases, equipment, machinery, and specialties.

"PARAGRAPH TWO. Colonial Optical Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office located in New York, N. Y. Said company is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 21 branches located in the principal cities of, and serving, the following territory: New York, the northern half of New Jersey, and all of New England. Of 6,777 shares of capital stock of said company outstanding, 6,452 shares are owned by Bausch & Lomb.

1640 "PARAGRAPH THREE. McIntire, Magee & Brown Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in Philadelphia, Pennsylvania. Said company is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 9 branches located in the principal cities of, and serving, the following territory: The southern half of New Jersey, the eastern half of Pennsylvania, Maryland (except two western counties), Delaware, the District of Columbia, and the northern quarter of Virginia. Of 3,695 shares outstanding capital stock of said company, 2,439 shares are owned by Bausch & Lomb.

"PARAGRAPH FOUR. Southeastern Optical Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office located in Richmond, Virginia. Said company is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 21 branches located in the principal cities of, and serving, the following territory: Virginia (except the northern quarter), North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and northeastern Arkansas. Said company has voting stock outstanding consisting of 2,014 shares of Class A stock, all of which is owned by Bausch & Lomb, and 2,668 shares of common stock, of which 1,559 shares are owned by Bausch & Lomb.

"PARAGRAPH FIVE. The White-Haines Optical Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office located in Columbus, Ohio. Said company is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 24 branches located in the principal cities of, and serving, the following territory: The western half of Pennsylvania, West Virginia, Maryland (two western counties), Ohio, Kentucky (except southwestern corner), Indiana (except three northwestern counties), central Illinois, and the southern peninsula of Michigan. Said company has voting stock outstanding as follows: 5,725 shares of second preferred, of which 4,280 shares are owned by Bausch & Lomb, and 14,376 shares of common stock, of which 7,650 are owned by Bausch & Lomb.

"PARAGRAPH SIX. Riggs Optical Company Consolidated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located in Chicago, Illinois. Said company is en-
1641 gaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 56 branches located in the principal cities of, and serving, the following territory: Illinois (except the central portion), Indiana (three northwestern counties), the southwest corner of Kentucky, the northern peninsula of Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, the eastern quarter of Montana, the eastern two-thirds of Wyoming, Nebraska, Iowa, Missouri, Kansas, Colorado, New Mexico, the southeastern corner of Arizona, Texas, Oklahoma, Arkansas (except the northeastern portion), and Louisiana. The outstanding voting stock of said company consists of 7,331 common shares, of which 6,555½ shares are owned by Bausch & Lomb.

"PARAGRAPH SEVEN. Riggs Optical Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located in San Francisco, California. Said company is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 33 branches located in the principal cities of, and serving, the following territory: Montana (except eastern quarter), the western third of Wyoming, Idaho, Washington, Oregon, California, Nevada, Utah, and Arizona (except southeastern corner). Of 8,860 shares outstanding capital stock of said company, 7,996½ shares are owned by Bausch & Lomb.

"PARAGRAPH EIGHT. Distribution and sale of the Bausch & Lomb products herein referred to is effected chiefly through the said six wholesale companies, to whom it sells the larger part of its products, and the rest are sold to other wholesalers. No sales are made direct to retailers. The various Bausch & Lomb products are listed, described, and priced in its catalogs, which are distributed to and used by, the wholesale companies as a basis for selling to the trade. Bausch & Lomb sells to the six wholesale companies and to other wholesalers at the same prices for goods of the same grade and description, regardless of quantity purchased. Bausch & Lomb, through its ownership of a majority of the outstanding voting stock of each of said wholesale companies, has power to coordinate and control the sales and pricing policies of said wholesale companies.

"PARAGRAPH NINE. Each of said six wholesale companies restricts its selling activities to its own territory, as above described, and said companies do not engage in competition with each other. Said companies deal principally in Bausch & Lomb products, although they also deal in the products of other manufac-
1642 turers; but their sales efforts are directed primarily to the sale of Bausch & Lomb products. The prices charged by them, respectively, and their respective discount plans are substantially the same, and as to Bausch & Lomb products, all of them quote the prices published in the Bausch & Lomb catalogs.

"PARAGRAPH TEN. Bausch & Lomb sells and distributes Bausch & Lomb products throughout the United States in competition with numerous other manufacturers of optical and ophthalmic products. Said wholesale companies, respectively, are engaged in substantial competition with other wholesalers and with American Optical Company branches in the sale and distribution of such products in most of the localities and sales areas in which said companies do business. Many of the customers of said wholesale companies are engaged in competition with each other and with customers of competitors of said companies, in the use and resale of such products in the several localities where such customers are located."

Dated, New York, N. Y., September 29, 1941.

SAMUEL S. ISSEKS,
Attorney for Plaintiff.

SIMPSON, THATCHER & BARTLETT,
Attorneys for Defendants, Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben. A. Ramaker, and Joseph F. Taylor.

1643 *Exhibit 207*

United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF

v.

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, R. G. LANDIS, MORRIS SINGER, DEFENDANTS

STIPULATION—CIVIL ACTION No. 10-393

The above-entitled case having come to trial before the Honorable Simon H. Rifkind, and certain evidence having been offered, and all parties having rested with the understanding, approved by the Court, that the parties would thereafter either enter into a stipulation concerning the amount of lenses sold by the Soft-Lite Lens Company in proportion to all other pink-tinted lenses sold in the United States or that the case would be reopened for the purpose of taking testimony on this subject, the parties hereto hereby stipulate and agree, for the purpose of this action only, and subject to objection on the grounds of immateriality and irrelevancy, and to any motion to strike heretofore or hereafter made on behalf of any of the above named defendants:

1. That the aggregate amount of pink-tinted lenses sold to optical wholesalers by Soft-Lite Lens Company, American Optical Company, Titmus Optical Company, Shuron Optical Company, and Continental Optical Company, in each of the years 1938, 1939, and 1940, in pairs and in dollars, is estimated to be:

1644

Year	Soft-Lite		Total	
	Pairs	Dollars	Pairs	Dollars
1938	447,171	807,000	1,150,523	1,598,179
1939	518,129	910,000	1,406,713½	1,887,868
1940	563,113	967,000	1,433,583½	1,939,592

2. That there are other pink-tinted lenses distributed by companies not listed in the previous paragraph whose figures are presently unavailable.

NEW YORK, N. Y., *October 27, 1941.*

SAMUEL S. ISSEKS,
IRVING B. GLICKFELD,
Attorneys for Plaintiff.

SIMPSON, THACHER & BARTLETT,
Attorneys for Defendants, Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor.

LEHRICH & LEHRICH,
Attorneys for Defendants, Soft-Lite Lens Company, Inc., Nathaniel Singer, R. G. Landis, and Morris Singer.

1723 *Defendants Exhibit A-1*



1646 *Court copy*

1647 *Exhibit A*

3/17/38.

DEAR NAT: As you suggested, I telephoned at ten this morning; but you were out, so I will call again, as I am very anxious to have a short talk with you before you leave the city.

I know from your letter that you do not feel inclined to add me to your sales staff, though I think you could profitably do so, as I should be able to add enough to your volume to vastly more than cover my cost—a modest salary and an honest, sensible expense acct.

But if this is out, then you may be able to make a suggestion. There must be some place in my own line where I could fit into an organization. With all my effort in the security field, I am actually unable to eat three times a day. Some days not even once. And this is true of old experienced security men with an established clientele. A weaker man in my place might have walked into the lake before now. But I am not a coward.

So far as your suit with Richols is concerned, Nat—take my advice and get a consent decree. I can see Masters' & reporter fees running into thousands of dollars. Like in war, all participants lose in a law-suit. I'll keep calling until I get you. I do need your advice.

Best,

ROY.

1648 *Exhibit "B"*

Chi., 1/29/34. Att. S. C. C.—*H. L.*-R. G. L. CB file.

Some fine imitation names in use. See enclosed.

CHALNEX-LENS PRICE LIST

DECEMBER 1933

BARNETT & RAMEL OPTICAL CO., INCORPORATED

KANSAS CITY, MO.
Box 1102

JOPLIN, MO.
Box 546

DES MOINES, IA.
Box 935

CHALNEX GENUINE KRYPTOK BIFOCALS

	Uncut	Bevel	Rimless
Spheres:			
0.12 to 3.00	$1.75	$2.00	$2.25
3.25 to 6.00	2.00	2.25	2.50
6.25 to 9.00	3.00	3.25	3.50
9.25 to 12.00	4.00	4.25	4.50
12.25 to 15.00	5.00	5.25	5.50
15.25 to 20.00	6.00	6.25	6.50
Cylinders:			
0.12 to 3.00	1.75	2.00	2.25
3.25 to 6.00	2.00	2.25	2.50
6.25 to 9.00	4.00	4.25	4.50
9.25 to 12.00	6.00	6.25	6.50
Compounds:			
0.12 to 3.00:			
0.12 to 3.00	1.75	2.00	2.25
3.25 to 6.00	2.00	2.25	2.50
3.25 to 6.00:			
0.12 to 3.00	2.00	2.25	2.50
3.25 to 6.00	2.25	2.50	2.75
6.25 to 9.00:			
0.12 to 3.00	3.00	3.25	3.50
3.25 to 6.00	4.00	4.25	4.50
9.25 to 12.00:			
0.12 to 3.00	4.00	4.25	4.50
3.25 to 6.00	5.00	5.25	5.50
12.25 to 15.00:			
0.12 to 3.00	5.00	5.25	5.50
3.25 to 6.00	6.00	6.25	6.50
15.25 to 20.00:			
0.12 to 3.00	6.00	6.25	6.50
3.25 to 6.00	7.00	7.25	7.50
Extras:			
Velvetlite—Rosalite—Crookealite	1.50	1.50	1.50
Melatone—Restlite—Soft-Ray			
Crooks	1.00	1.00	1.00
Fancy Shapes		.75	.50
Korflex or Scalloped edges			1.25
One-piece Bifocals A Style Twinsights	1.50	1.50	1.50
Adds Stronger than 3.00 Diopters	1.00	1.00	1.00
Transpose One-piece to plus cylinders.			
Transpose Kryptoks to Minus Cylinders.			

When ordering be sure to specify Chalnex. Prices subject to change without notice.

1649 CHALNEX LENSES—SINGLE VISION

	Uncut	Bevel	Rimless
Spheres:			
0.12 to 3.00	$0.75	$0.90	$1.15
3.25 to 6.00	.90	1.10	1.35
6.25 to 9.00	1.75	1.90	2.15
9.25 to 12.00	1.90	2.10	2.35
12.25 to 15.00	2.30	2.60	2.85
15.25 to 20.00	3.30	3.60	3.85
Cylinders:			
0.12 to 3.00	.85	1.00	1.25
3.25 to 6.00	1.25	1.50	1.75
6.25 to 9.00	2.25	2.50	2.75
9.25 to 12.00	3.25	3.50	3.75
Compounds:			
0.12 to 3.00:			
0.12 to 3.00	.85	1.00	1.25
3.25 to 6.00	1.25	1.50	1.75
3.25 to 6.00:			
0.12 to 3.00	1.25	1.50	1.75
3.25 to 6.00	1.75	2.00	2.25
6.25 to 9.00:			
0.12 to 3.00	2.25	2.50	2.75
3.25 to 6.00	3.25	3.50	3.75
9.25 to 12.00:			
0.12 to 3.00	3.25	3.50	3.75
3.25 to 6.00	4.25	4.50	4.75
12.25 to 15.00:			
0.12 to 3.00	4.25	4.50	4.75
3.25 to 6.00	5.25	5.50	5.75
15.25 to 20.00:			
0.12 to 3.00	5.25	5.50	5.75
3.25 to 6.00	6.25	6.50	6.75
Extras:			
Velvetlite-Roselite-Crookeslite	1.00	1.00	1.00
Meletone-Restlite-Soft-Ray			
Crooks	.50	.50	.50
Fancy Shapes		.50	.25
Korflex or Scolloped Edges		1.25	1.25

When ordering be sure to specify Chalnex. Prices subject to change without notice.

1650 *Exhibit C*

	Barnet Ramel							
	1931		1932		1933		1934	
Jan			12	22.77	113	128.90	20	27.67
Feb	219	305.65	51½	101.50	55	61.32	61½	66.93
Mar	182	298.34	41	64.52	79	95.14		
Apr	74	114.04	30½	50.56	45	73.52		
May	224	370.86	44½	74.15	31	82.85		
June	112	254.81	23	40.46	85	105.25		
July	147½	204.88	56½	102.48	65	83.63		
Aug	407	454.37	30	52.61	99	116.41		
Sept	68	186.58	117	130.38	125	155.82		
Oct	56½	145.63	71	97.84	81	104.84		
Nov	53	74.64	52½	71.03	151	230.95		
Dec	22½	55.59	40	55.71	75	81.39		
	1,867½	2,455.39	599½	864.01	1,004	1,320.02	81½	94.60

Year	Regular Toric				Orthagon			Total
	Uncuts	Semi-Fin.	Rgh.	Bifocals	Uncuts	Semi-Fin.	Bifocals	
1931	146	57	1,069		29	142	123	1,565
1932		55	324	41½	25	143	8½	599½
1933		135	521	17	47	279	1	1,004

1651 *Exhibit D*

JUNE 10, 1937.

Mr. E. ARNOLD,
Arnold Optical Company,
122 South Michigan Avenue, Chicago, Illinois.

DEAR ED: In accordance with your telegram, we are proceeding to make shipment of your qualifying order of a little more than 300 pairs, which raises your classification from that of a Soft-Lite Class "A" Wholesaler to that of a Soft-Lite Distributor.

We shall await receipt of the letter which you advise you have sent us in regard to the Orthogon No. 2 shade uncut lenses which we were unable to supply.

It is understood that you will place with us by November 1, 1937 orders amounting to 200 pairs of Soft-Lites in minimum quantities of 25 pairs at a time, to apply against the remainder of 200 pairs due us on your qualifying order.

We are, as of this date, billing your Soft-Lites to you at Distributors' rates, as indicated on the enclosed Distributors' price list. If, however, this Balance of 200 pairs is not called out by November 1st, all shipments thereafter will be billed to you at the Class "A" wholesale prices as heretofore.

This is a deviation from our usual policy in such matters; but, as you know, we are anxious to cooperate with you just as far as it is possible for us to do so.

We are sending to you separately six copies of the Soft-Lite Distributors' price lists for your guidance, 12 Sample Sets and 6 of the Nos. 1 and 2 shade Soft-Lite Trial Case Accessories.

With kindest regards,

Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: L. C. K.

1652 *Exhibit E*

ARNOLD OPTICAL COMPANY
122 South Michigan Avenue
CHICAGO, ILLINOIS

DECEMBER 8, 1937.

Mr. NAT SINGER,
745 Fifth Avenue, New York, N. Y.

DEAR NAT: I was very much surprised to learn your decision to take Arnold Optical Company off Soft-Lite list completely.

We understand it is your impression that we have not sold enough of your lenses to satisfy your requirements. I think we

have done all that could be expected of a new firm and quite as much as some others on your list.

If the real reason for taking us off is because we have not been able to buy the volume, I think we should still be on your list under another classification. I have been under the impression that we were complying with all requirements made in your agreement in the letter of May 15th sent to Ray Landis and a copy left with me.

Just why and for what reason you have decided to entirely eliminate us, I am at a loss to understand. I would appreciate you writing me further in explanation of your recent decision.

Very truly yours,

ARNOLD OPTICAL COMPANY,
E. W. ARNOLD.

1653 *Exhibit F*

OCTOBER 16, 1937.

Mr. EDWARD ARNOLD,
Arnold Optical Company,
122 South Michigan Avenue, Chicago, Illinois.

DEAR ED; I had expected that in response to my letter of October 9th you would take immediate steps to place your account in current condition, for, as you know, this was the understanding which was to be followed when we took over your account.

Pending the receipt of your remittance it will be necessary for us to withhold all shipments except those on rush orders.

We dislike the necessity for writing you in regard to your account, particularly when the size of your purchases actually do not warrant our carrying you on our list of Soft-Lite wholesalers.

Will you, therefore, please give this your attention?

With kind regards,

Yours very truly,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: L. C. K.

1654 *Exhibit G*

OCTOBER 9, 1937.

Mr. EDWARD ARNOLD,
Arnold Optical Co.,
122 South Michigan Ave., Chicago, Illinois.

DEAR ED: In the course of our usual routine, the few past-due accounts receivable have been brought to my attention.

As I notice that your account, as of September 30, carries the past-due item of $121.22, I should like to urge at this time that your October remittance be increased in order to bring your account up to date.

We should like to start off the last quarter of the year in this way with the feeling that it is in our mutual best interests.

With kind personal regards,

Very truly yours,

SOFT LITE LENS COMPANY, INC.

R. G. Landis: F. M. C. G.

1655 *Exhibit H*

CLARE BARNES

345 Central Avenue

DUNKIRK, NEW YORK

JUNE 28, 1939.

SOFT-LITE LENSE CO.,

New York, N. Y.

(Attention Mr. Singer.)

DEAR SIRS: In reply to your letter of June 19, I wish you would please inform me as to the name of your sales or promotion representative that called on me May 25, 1939, and also his home address.

I believe it would be to your future business interests to investigate the conduct of this representative in the various business places throughout the Western New York territory, and especially in Buffalo.

I also desire that you advise me in advance when he is to again make calls in the City of Dunkirk, New York, as it is my intention to proceed with court action against him on account of his participation, as well as being the instigator, in a disorderly proceeding while in my office. I might add that I have three dependable witnesses besides the writer who are ready to give evidence against your sales representative.

If I am fortunate enough to get court service upon him, I shall be very glad to forward you a copy of the court proceedings.

Yours truly,

CLARE BARNES.

I. J.: C. B.

P. S.—Prior to leaving my office your sales representative made the statement that he was sorry for his conduct. This statement was heard by the above-mentioned witnesses.

1656 *Exhibit I*

(394)

DEPARTMENT OF COMMERCE

UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the Certificate of Registration, Statement, Declaration, Drawing, and Certificate of Renewal in the matter of the Trade-Mark Registered to Morris Singer, June 3, 1913, Number 91,909; Renewed March 7, 1933, to Soft-Lite Lens Co., Inc., a corporation of New York, assignee by mesne assignments.

The certificate of registration was granted for the term of twenty years, and so far as is disclosed by the records of this office, said certificate is still in full force and effect, being renewed from June 3, 1933, for twenty years.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this twenty-ninth day of January, in the year of our Lord one thousand nine hundred and thirty-eight and of the Independence of the United States of America the one hundred and sixty-second.

[SEAL] CONWAY P. COE,
Commissioner of Patents.

Attest:
S. EICHELSON,
Chief of Division.

1657 2-372 No. 91909

THE UNITED STATES OF AMERICA

To all to whom these Presents shall come:

This Is To Certify that by the records of the United States Patent Office it appears that Morris Singer, of New York, N. Y., did, on the 21st day of September, 1912, duly file in said Office an application for REGISTRATION of a certain Trade-Mark for certain named measuring and scientific appliances, that he duly filed therewith a drawing of the said trade-mark, a statement relating thereto, and a written declaration, duly verified, copies of which are hereto annexed, and has duly complied with the

requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination thereof, it appearing that the said applicant is entitled to registration of his said trade-mark under the law, the said trade-mark has been duly registered to Morris Singer, his heirs or assigns, in the United States Patent Office, this third day of June 1913.

This certificate shall remain in force for twenty years, unless sooner terminated by law.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this third day of June, in the year of our Lord one thousand nine hundred and thirteen and of the Independence of the United States the one hundred and thirty-seventh.

[SEAL.]

C. C. BILLINGS,
Acting Commissioner of Patents.

1658 RENEWED TO

SOFT-LITE LENS CO., INC., A CORPORATION OF NEW YORK

UNITED STATES PATENT OFFICE

MORRIS SINGER, OF NEW YORK, N. Y.—TRADE-MARK FOR CERTAIN NAMED MEASURING AND SCIENTIFIC APPLIANCES

91,909. Registered June 3, 1913.

Application filed September 21, 1912. Serial No. 65,912

Statement

To all whom it may concern:

Be it known that I, MORRIS SINGER, a citizen of the United States, residing at New York, in the county of New York and State of New York, and doing business at No. 114 Fulton Street, in the borough of Manhattan, in the city of New York, in the county of New York and State of New York, have adopted for my use the trade-mark shown in the accompanying drawing, for actinometers, altimeters, altiscopes, anemometers, aneroids, apomecometers, astrolabes, astrometers, astronomical transits, astronomical universal instruments, astroscopes, azimuth-circles, azimuth-dials, balances, barometers, bathometers, bevels, calculators, calorimeters, camera lucidas, camera obscuras, circumferentors, clinometers, collimators, compasses, prismatics, demicircles, eyeglasses, field-glasses,

heliometers, hygrometers, hypsometers, kaleidoscopes, kinematographic cameras, kinematographic projecting apparatus, lactometers, lenses, lens-testers, mariners' compasses, microscopes, odometers, opera-glasses, optical squares, optometers, pedometers, photographic cameras, photometers, plane-tables, planimeters, planetaria, projecting-lanterns, projecting-slides, recorders, such as cartographic, heat, pressure, speed, time recorders, scales, sectors, sextants, stadia, stereoscopes, stereoscopic views, sun-dials, surveying-aneroids, surveying-compasses, surveyors' chains, surveyors' crosses, surveyors' transits, telemeters, telescopes, telluria, theodolites, thermometers, weather-vanes, zenith-sectors, zenith-tubes, in Class No. 26, Measuring and scientific appliances.

The trade-mark has been continuously used in my business since the first day of January, 1908.

The trade-mark is applied or affixed to the goods, or to the package containing the same, or the printed matter accompanying the same, or the letter heads and other stationery used in connection with the goods, in any suitable manner.

MORRIS SINGER.

[SOFT-LITE]

Declaration

STATE OF NEW YORK,
County of New York, ss:

Morris Singer, being duly sworn, deposes and says, that he is the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm or corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by him in commerce among the several States of the United States and between the United States and foreign nations, and particularly with Germany; that the drawing truly represents the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used.

MORRIS SINGER.

Sworn to and subscribed before me, a notary public, this 19th day of September, 1912.

[L. S.] THOMAS H. CALHOUN,
Notary Public, New York County.

1659 THE UNITED STATES OF AMERICA

Application having been made by Soft-Lite Lens Co., Inc., of New York, New York, a corporation of New York, assignee by mesne assignments, for renewal of Certificate of Registration of Trade-Mark No. 91,909, registered June 3, 1913, to Morris Singer, for Certain named measuring and scientific appliances, and the renewal fee required by law having been paid, this is to certify that said Certificate of Registration No. 91,909, has been renewed to Soft-Lite Lens Co., Inc., a corporation of New York, and will remain in force for twenty years from June 3, 1933, unless sooner terminated by law.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 7th day of March 1933.

[SEAL.]

THOMAS E. ROBERTSON,
Commissioner of Patents.

Attest:
G. P. TUCKER,
Law Examiner.

1660 *Exhibit J*

PRESCRIPTION PRICE-LIST FOR SOFT-LITE LENSES

(Made in France. Registered U. S. Patent Office)

Soft-Lite Lenses are rose-tinted, specially effective in eliminating injurious rays without interference with color perception or beneficial white light, made in two inconspicuous tints. Shade 1 (light), and Shade 2 (medium).

Distributed by America's Leading Prescription Jobbers

MENISCUS

	Convex	Concave
Plano to 2.00D. :-	$3.25	$3.35
2.25D. to 4.25D. :-	3.50	3.65
4.50D. to 6.00D. :-	3.50	3.65
6.50D. to 8.00D. :-	4.00	4.25

TORICS

Plano-Cylinders

	Convex	Concave
0.12D. to 2.00D. :-	$4.00	(see
2.25D. to 4.25D. :-	4.35	−+
4.50D. to 6.00D. :-	4.85	torics
		below)

Sphero-Cylinders
(+=+)

			−+	−+
0.12D. to 2.00D. sph.	0.12D.—2.00 cylinder		$4.00	$4.35
2.25D. to 4.25D. sph.			4.25	4.95
4.50D. to 6.00D. sph.			4.50	5.55
6.50D. to 8.00D. sph.			4.75	6.35
0.12D. to 2.00D. sph.	2.25—4.25 cylinder		4.65	4.95
2.25D. to 4.25D. sph.			4.85	5.35
4.50D. to 6.00D. sph.			5.15	6.55
6.50D. to 8.00D. sph.			5.35	7.55
0.12D. to 2.00D. sph.	4.50—6.00 cylinder		5.50	5.75
2.25D. to 4.25D. sph.			5.75	6.65
4.50D. to 6.00D. sph.			6.00	6.95
6.50D. to 8.00D. sph.			6.25	8.55

Above prices per pair, Net, subject to Cash discount only and include edging, drilling, and mounting; deduct 50c per pair on uncut orders.

BIFOCALS

(Available about March 1st)

Soft-Lite Ultex: $3.50 per pair above white Ultex Rx rates.
Soft-Lite Kryptok: $3.00 per pair above white Kryptok Rx rates.

EXTRAS

Cement Bifocal, Prisms, Special Shapes, and other usual Extras at same rates as listed on jobbers' Rx Lists.

(Issued By The Optical Service Corporation (Sole Owners), New York)
Effective February 10, 1923.

1661 *Exhibit K*

DISTRIBUTORS PRICES

	Reg. S. V. Comp.	Orth. S. V. Comp.	Orth. D blanks	Duosite blanks, S. F.
February 1923	3.60—⅓ & 25, net 1.75.			
March 1925	3.00—⅓ & 25, net 1.50.			
April 1926	3.50—⅓ & 25, net 1.75.			
November 1927	3.20—⅓ & 25, net 1.60.			5.50—⅓ & 25, net 2.75.
October 1928—Orthogon only		3.70—⅓ & 25, net 1.85.		
August 1931—Enlarged divisions	3.00—⅓ & 25, net 1.50.	3.50—⅓ & 25, net 1.75.	7.20—⅓ & 25, net 3.60.	6.00—⅓ & 25, net 3.00.
April 1, 1936, net prices	1.45	1.65	4.00	3.00.
December 1937—Divisions added to 4/1/36 & D increased & Reg. Ulter added.			4.10	
February 1939—Plano Men. added	1.30	1.50	3.90	
April 1939, same as above changes on Plano Meniscus.				
January 2, 1940—Plano Men. changed again; no other changes.				
August 26, 1940, April 1, 1941 Ful-Vue added.			3.00	

1662 RETAILER (STOCK)

February 1923	3.50—⅓, net 2.33.			
March 1925	3.00—⅓, net 2.00.			
April 1926	3.50—⅓, net 2.33.			
November 1927	3.20—⅓, net 2.13.			5.50—20% net 4.40.
October 1928		3.70—25%, net 2.77.		
January 1930—Enlarged divisions		3.50—⅓; net 2.33.		
August 1931—Enlarged divisions	3.60—⅓, net 2.00.		7.20—⅓, net 4.80.	6.00—25% net 4.50.
April 1936; 3 columns on 80 & prices net	1.95	2.31	5.35	4.50.
February 1939, 25 pr. & 30 prs. columns on S. V. uncut & Plano Meniscus added.	Down to 1.55.	Down to 1.90.	Down to 4.50.	Down to 3.75.
January 1940, column headings changed.				
August 26, 1940			Down to 3.40.	
April 1, 1941—S.-L. Ful-Vue added.				

1663

RX PRICES

	Reg. S. V. Comp.	Orth. S. V. Comp.	Orth. D Comp.	Duosites Comp.	Panoptiks Comp.
February 1923	4.00				
March 1925	4.00				
April 1926	4.00				
October 1928 (edged & mounted added).		4.25–4.50			
February 1930 (edged & mtd. added).	3.75–4.00			7.00–7.50	
August 1931 (Divisions enlarged), & one price for mtd. or inserted, no prices for edged on S. V., but Bifocals still edged & mtd. except on Panoptiks & Duosites.	3.75	4.25	8.25–8.75	7.50	11.10.
(Bifocal only)					
February 1935—Edged & mtd. on all bifocals.			8.50–9.00	6.75–7.25	9.75–10.25.
April 1, 1936	3.50–3.75	4.00–4.25			
August 26, 1940—Change on D only.			6.50–7.00		
(S. V. only)					
April 1, 1941, 3 columns on S. V.	3.10–3.35, 3.70	3.45–3.70, 4.05			
April 1, 1941—Ful-Vue added.					

1664

Exhibit L

SOFT-LITE DISTRIBUTORS

Atlas Optical Company, New Orleans, La. 1930.
Bartels Optical Company, Chicago, Ill. 1926.
Belgard, Inc., Chicago, Ill. 6/13/35.
Belgard-Spero, Inc., Chicago, Ill. 1926.
N. P. Benson Optical Co., Minneapolis, Minn. 1928.
Berks Optical Company, Reading, Pa. 1930.
Bishop Optical Company, Bluefield, W. Va. 3/20/41.
Blue Grass Optical Co., Lexington, Ky. 5/15/39.
Boll & Lewis Optical Co., Chicago, Ill. 10/6/39. Stock Licensee 1/36.
Bradley Optical Company, Los Angeles, Calif. 12/5/38.
Brent Optical Company, Altoona, Pa. 3/24/39. Stock Licensee 9/8/32.
Burleigh Optical Company, Tilton, N. H. 10/20/32.
Charles E. Carlson, Inc., Brooklyn, N. Y. 1/2/34.
Central States Optical Co., Chicago, Ill. 12/13/39.
City Optical Company, Wilmington, N. C. 4/1/39. Class "A" 11/7/32.
Clinton Optical Company, Rochester, N. Y. 1926.
Colonial Optical Company, New York. 1922.

Connecticut Optical Company, Waterbury, Conn. 3/10/39. Stock Licensee 8/1/35.

Dalton-Webb Opt. Co., Toledo, Ohio. 3/24/39. Class "A" 11/16/38.

Dando & Fadden, Scranton, Pa. 9/1/33.

Dewein Optical Company, Buffalo, N. Y. 3/25/39. Class "A" 9/7/35.

Diederich Optical Co., Los Angeles, Calif. 9/12/28.

Dorr Optical Company, Beverly Hills, Calif. 7/20/41. Stock 1/40.

Dow Optical Company, Chicago, Ill. 1923.

Dubois Optical Co., Dubois, Pa. 7/23/41.

Easton Optical Company, Easton, Pa. 6/17/40.

Edelstein Bros. Syracuse, New York. 7/9/31.

1665 B. K. Elliott Co., Pittsburgh, Pa. 3/17/39. Class "A" 8/19/36.

Fort Wayne Optical Co., Fort Wayne, Ind. 1922.

Fox Optical Company, Indianapolis, Ind. 1/20/37.

Louis Friedlander, Inc., New York City. 10/1/34.

Geneva Optical Company, Geneva, N. Y. 12/18/35.

Gracy Wolf Opt. Co., Akron, Ohio. 4/25/31.

Joseph Greiff, Inc., Brooklyn, N. Y. 7/16/31.

Gregory Optical Co., Jackson, Michigan 5/7/31.

Henry Hennessey, Inc., New Orleans, La. 5/1/38. Class "A" 5/1/36. Stock 10/18/34.

Hilbert Optical Co., Baltimore, Md. 3/3/31.

A. E. Holden, Houlton, Maine. 8/31/36. Stock 8/8/35.

Houchin Optical Co., Newark, N. J. 5/12/38. Class "A" 1/27/36. Stock 12/20/34.

Hubbard-Leslie Opt. Co., Toledo, Ohio. 4/18/40.

Hudson Valley Opt. Co., Poughkeepsie, N. Y. 6/7/41. Class "A" 2/4/37. Stock 3/10/33.

Hygrade Optical Co., New York City. 3/23/36. Class "A" 10/10/35.

Jenkel-Davidson Optical Co., San Francisco. 4/12/35.

Johnston Optical Co., Detroit, Michigan. 1922.

Kalamazoo Opt. Co., Kalamazoo, Michigan. 12/4/40. Stock 11/5/29.

F. W. King Opt. Co., Cleveland, Ohio. 1926.

Kirstein Opt. Co., Rochester, New York. 4/27/32.

Klauer Optical Co., Dubuque, Iowa. 8/14/41. Stock 6/6/39.

L. H. Kosh & Co., New York City. 10/26/33.

Lehigh Optical Co., Allentown, Pa. 11/13/40. Stock 4/21/30.

Lehmann Optical Co., New York City. 10/25/35.

Robert Levin, Inc., New York City. 1927.

J. E. Limeburner Co., Philadelphia, Pa. 3/15/39. Class "A" 7/1/34.
Linden Optical Co., Allentown, Pa. 3/17/39. Class "A" 9/15/37.
Maves Optical Co., Grand Forks, N. D. 6/26/40.
F. H. McGary Opt. Co., Bangor, Maine. 8/28/36.
1666 McClenaghen Optical Company, Philadelphia, Pa. 2/6/40. Stock 8/11/36.
McIntire Magee & Brown Co., Philadelphia, Pa. 1922.
McLeod Optical Co., Providence, R. I. 5/24/32.
Miller Optical Co., Chicago, Ill. 7/15/38.
Milwaukee Opt. Mfg. Co., Milwaukee, Wisc. 1927.
S. R. Nay Optical Co., Battle Creek, Michigan. 12/4/40.
August Neuse & Co., New York City. 7/6/36.
Newman Brown Opt. Co., Buffalo, N. Y. 10/17/38.
Niagara Optical Co., Buffalo, N. Y. 6/20/39.
North Star Optical Co., New York City. 3/15/37.
Ohio Optical Co., Canton, Ohio. 10/19/40.
Paramount Optical Co., Indianapolis, Ind. 2/20/41.
Philadelphia Optical Co., Philadelphia, Pa. 9/23/36.
Phoenix Optical Co., Bay City, Michigan. 2/23/40.
Potter & Schnackenberg, New York City. 1922.
Quinton Duffens Optical, Topeka, Kansas. 4/25/32.
Ray Optical Company, Lewiston, Maine. 7/18/41.
Reading Optical Co., Reading, Pa. 6/14/35.
Reese Optical Co., Mansfield, Ohio. 9/5/35.
Riggs Optical Company, Chicago. 1927.
Riggs Optical Company, San Francisco. 1927.
Schroeder-Miller Optical Co., Chicago, Ill. 1928.
Schulte & Fox Opt. Laboratory, Detroit, Mich. 6/10/38.
Schulte Optical Co., Detroit, Michigan. 4/25/32.
Seidel Optical Service, New York City. 1927.
Silbert Optical Company, Buffalo, N. Y. 12/26/39.
Southeastern Optical Co., Richmond, Va. 1928.
Southerland-Helms Co., Charlotte, N. C. 3/24/39. Stock 4/20/34.
1667 Southwest Optical Company, Los Angeles, Calif. 4/27/37.
Geo. W. Spratt Opt. Co., Los Angeles, Calif. 10/24/34.
G. & F. Stannard Co., Cincinnati, Ohio. 1/16/31.
M. E. Stern, Inc., New York City. 4/12/35.
Superior Optical Co., Los Angeles, Calif. 2/15/32.
Tennessee Optical Co., Knoxville, Tenn. 12/16/40.
Twin City Optical Co., Minneapolis, Minn. 1928.
Twin Ports Optical Co., Duluth, Minn. 4/12/32.
Uhlemann Optical Co., Chicago, Ill. 1922.

Wallace Optical Co., Lansing, Michigan. 4/1/40.
Walman Optical Company, Minneapolis, Minn. 1927.
Western Optical Co., Salt Lake City, Utah. 1/2/26.
White Haines Optical Co., Columbus, Ohio. 1922.
Wilson & Halford Optical Co., Boston, Mass. 2/24/36.
Winchester Optical Co., Horseheads, N. Y. 1922.
York Optical Company, York, Pa. 3/27/41. Stock 1939, Class "A" 1937.

1668 *Exhibit M*

RX CANCELLATION SUMMARY

Inactivity	65	Working Credit Jewelry Stores	12
Price cutting	7	Mis. Reasons	32
Undesirable	50	Deceased	79
Using Lens Other Than Soft-Lite	34	Out of Business	53
Working in Department Stores	9	Cannot Locate	9
Chain Jewelry Stores	4	Retired	4
Using Soft-Lite for Convenience Only	8	Sold Business	9

1669 RX LICENSEES CANCELED BECAUSE OF INACTIVITY

Rob Adams, O. D. (Southeastern), Birmingham, Ala. 10/13/39. RAS letter—Southeastern.

P. H. Linehaus, O. D., Birmingham, Ala. 10/23/39. RAS letter 10/39.

Irving Adler, O. D. (E. W. Reynolds Co.), Los Angeles, Calif. 10/24/38. JDW—verbal.

R. J. Carreon, O. D., Los Angeles, Calif. 10/24/38. JDW—Nonuse—Verbal.

P. B. Davis (E. W. Reynolds), Los Angeles, Calif. 10/24/38. JDW—Nonuse—Verbal.

Lionel Lewis, O. D. (E. W. Reynolds Co.), Los Angeles, Calif. 11/18/38. JDW letter 11/16/38.

Lewis G. Sutton, O. D. (E. W. Reynolds Co.), Los Angeles, Calif. 11/18/38. JDW letter 10/25/38.

L. Ray Turner, O. D. (Quinton-Duffens), Los Angeles, Calif. 11/11/38. JDW letter 10/25/38.

Henry & Poole (R. Mohr & Sons), Marysville, Calif. 2/8/38. Riggs—nonuse.

W. A. Meyer, O. D. (Riggs Optical Co.), Sacramento, Calif. 10/24/38. DST—Verbal—nonuse.

W. O. Holiman, O. D. (Riggs Optical Co.), Colorado Springs, Colo. 10/25/38. DST letter 9/25/38—nonuse.

F. A. Gaylord, O. D. (Colonial Optical Co.), New Haven, Conn. 3/1/40. E. Robinson—total loss (call report).

Max S. Shane, O. D. (Southeastern), Jacksonville, Fla. 12/13/39. R. A. Smith.

J. E. Payne, O. D. (Southeastern), Marianna, Florida. 12/13/39. R. A. Smith.

1670 P. A. Simmons, O. D. (Riggs), Boise, Idaho. 3/13/39. J. D. Wetmore call report—nonuse.

C. F. Cochran (Riggs), Chicago, Ill. 8/3/38. Riggs letter 7/22/38. Inactive and poor credit.

Fred A. Ferdinandsen (Riggs), Chicago, Ill. 2/23/40. Riggs letter.

Donze-Wagner (Riggs), E. St. Louis, Ill. 4/1/38. ETS letter 4/16/38.

J. H. Seitz (Riggs), Highland, Ill. 4/18/38. ETS letter 4/16/38.

O. T. Kruse, Jerseyville, Ill. 4/18/38. ETS letter 4/16/38.

J. C. Schosser, Kankakee, Ill. 9/9/38. ETS letter 4/16/38—very inactive.

Ferd Weiler, O. D. (Riggs), Lawrenceville, Ill. 4/1/38. Riggs letter 3/30/38. This account was reinstated 6/15/38.

J. A. Pappmeier (White-Haines), Litchfield, Ill. 5/3/38. ETS letter 4/28/38—deal with non-Soft-Lite Distributors.

H. A. Weber (Riggs), Murphysboro, Ill. 4/18/38. ETS letter 4/16/38.

W. L. Doelling (White-Haines), Pano, Ill. 5/3/38. ETS letter 4/28/38—deal with non-Soft-Lite Distributors.

G. E. Hovenden (White-Haines), Pekin, Ill. 5/3/38. ETS letter 4/28/38—deal with non-Soft-Lite Distributors.

W. H. Scott (Riggs), Peoria, Ill. 5/3/38. ETS letter 4/28/38—deal with non-Soft-Lite Distributors.

J. A. Martin (Riggs), Quincy, Ill. 4/8/38. ETS letter 4/5/38.

1671 Dr. Frank M. Kaup (Riggs), Des Moines, Iowa. 4/29/40. Lack of interest (ETS).

Milton N. Smith (Riggs), Des Moines, Iowa. 4/28/40. Lack of interest (ETS).

Frank Goswitz (Riggs), St. Paul, Minn. 2/10/39. ETS—Riggs and Walman also say: Inactive.

E. E. Jones (Twin City), St. Paul, Minn. 2/10/39. ETS says Riggs and Walman claim inactivity.

John Keller (Riggs), St. Paul, Minn. 2/10/39. ETS says Riggs and Walman claim inactivity.

W. B. Herrington (Southeastern), Belzoni, Miss. 3/28/38. J. H. Vernon letter 3/26/38.

C. G. Olson (Southeastern), Indianola, Miss. 3/28/38. J. H. Vernon letter 3/28/38.

F. J. Pratte (Riggs), Festus, Missouri. 4/18/38. ETS letter 4/16/38.

H. W. Hagenah (Riggs), Kansas City, Missouri. 4/13/38. ETS letter 4/7/38.

F. B. Toussaint, Q. D. (Riggs), Kansas City, Mo. 1/20/40. Riggs letter.

V. D. Hill, O. D. (Riggs), Overland, Missouri. 4/16/38. ETS letter.

O. J. Fritsch (Riggs), University City, Mo. 4/16/38. ETS letter.

Frank E. Green (Riggs), Albuquerque, N. Mex. 5/10/39. Riggs letter 5/3/39—nonuse.

S. B. Dembo (Colonial), Binghamton, New York. 4/26/38. F. Bernard call report 4/20/38; Haven't sold Soft-Lites for 3 years.

1672 T. J. McConnell (Colonial), Binghamton, New York. 4/26/38. 4/20/38—call report of F. Bernard: Haven't sold Soft-Lite for 3 years.

E. L. Egolf (McIntire), Harrisburg, Pa. 3/23/40. McIntire letter 3/22/40. F. Bernard 3/6/40—cut rate advertisers.

Herman Klein (McIntire), Harrisburg, Pa. F. Bernard call report 3/6/40. McIntire letter 3/22/40.

F. C. Cathey (Riggs), Hamilton, Texas. 8/25/39. Riggs letter.

H. F. Gilmore (Southeastern), Knoxville, Tenn. 4/4/40. R. A. Smith call report.

J. J. McGuire (Southeastern), Knoxville, Tenn. 4/4/40. R. A. Smith call report.

Cook Optical Company (Southeastern), Knoxville, Tenn. 4/4/40. R. A. Smith call report.

H. B. Cannon (Riggs), Fort Worth, Texas. 2/27/40. F. L. Slosson.

A. Shaver (Riggs), Houston, Texas. 8/29/39. Riggs letter 8/7/39.

E. T. Jennison (Riggs), San Antonio, Texas. 6/21/39. Riggs and JHV call report 6/16/39.

A. R. Slader & Son (Colonial), Rutland, Vermont. 4/26/38. F. Slosson letter 4/14/40.

J. Mantell (Riggs), Racine, Wisc. 3/23/40. ETS letter.

C. A. Beswick, O. D. (Milwaukee), Delavan, Wisc. 3/23/40. ETS letter.

E. L. Brill, O. D. (Milwaukee), Milwaukee, Wisc. 3/23/40. ETS letter.

1673 Arthur B. Meyer, O. D. (Milwaukee), Milwaukee, Wisc. 3/23/40. ETS letter.

Frank K. Pollon (N. P. Benson), Milwaukee, Wisc. 3/23/40. ETS letter.

John W. Schulenberg (Milwaukee), Milwaukee, Wis. 3/23/40. ETS letter.

Charles Imig, O. D. (Milwaukee), Sheboygan, Wisc. 3/23/40. ETS letter.

J. P. Krevolin (McLeod), Warren, R. I. 4/4/40. F. L. Slosson.

H. L. Noble, O. D. (Riggs), San Antonio, Texas. 6/2/39. JHV call report 6/16/39 (Riggs say OK).

F. C. Cathey, Hamilton, Texas. 8/25/39. Riggs letter.

C. W. Morris, Fort Wayne, Ind. 3/27/39. ETS letter 3/18/39.

Grim Optical Company, Cedar Rapids, Iowa. 6/21/38. ETS call report 6/4/38. Reinstated as Stock 4/41.

1674 RX LICENSES CANCELLED—PRICE CUTTING

Wm. H. Nieder (Riggs), Chicago, Illinois. 4/14/38. Riggs letter 2/10/38—does sell Soft-Lite credit jeweler—does no refracting—does not have an O. D.

J. W. Garrity, Chicago, Ill. 2/28/40. Now associated with Goldbatt's cut rate firm (Riggs letter 2/28/40).

C. L. Abell (White-Haines), Henderson, Ky. 1/9/39. GWR letter 1/7/39—Malpractice.

E. P. Ackley (Colonial), Brunswick, Maine. 8/21/39. Now working for Day's jewelry Co., largest chiselling outfits in the country. Colonial letter 8/10/39.

J. Natsias (Colonial), Fall River, Mass. 6/28/39. E. Robinson report—now at Clarke's cut price place.

Harry H. Lewis (McIntire), Philadelphia. 10/23/39. McIntire letter—cut rate activities.

J. R. Bontley (White-Haines), Columbus, Ohio. 9/39. Price buyer—uses Velvetlites—GWR report—this account reinstated 1/17/40.

1675 RX LICENSEES CANCELLED—UNDESIRABLE

Joseph Wilson (Southwest), Long Beach, Calif. 10/7/38. JDW advised not right type—bad actor.

S. Bronow (E. W. Reynolds), Los Angeles, Calif. 9/8/38. Given chance to play ball but refused. JDW call report 8/24/38.

J. Nyrin, O. D. (Riggs), Los Angeles, Calif. 8/2/38. NG account. JDW call report 7/21/38.

F. W. Laufer, O. D. (R. Mohr & Sons), Oakland, Calif. 10/24/38. NG—verbal DST.

Stanley Hymes, O. D. (E. W. Reynolds), San Diego. 10/24/38. NG—verbal DST.

Reliable Eye Glass Shop (McIntire), Washington, D. C. 11/22/38. JHV letter 11/19/38—not desirable type.

A. O. Hooker, O. D. (Riggs), Aurora, Ill. 5/13/40. ETS undesirable and inactive.

Clifton C. Bailey (Schroeder-Miller), Chicago, Ill. 4/1/38. Account reinstated 6/12/40 through Schroeder-Miller.

Bergson & Co. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

H. R. Berns O. D. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

Ernest R. Bronson, O. D. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

1676 O. C. Brunais, O. D. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

H. R. Cox, O. D. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

C. D. Crawford, O. D. (Riggs), Chicago. 4/1/38. Riggs letter 3/30/38.

Damen Drug & Opt. co. (Riggs), Chicago. 4/1/38. Riggs letter 3/30/38.

Frank Loedige (Riggs), Chicago. 4/1/38. Riggs letter 3/30/38. Reinstated 5/40 by Central States Opt. Co.

V. B. Dixson (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

Richard J. Godin (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38; reinstated 8/31/38 by ETS and A. R. Schrader.

V. A. Greene (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38; reinstated 6/39 by ETS letter.

Edward T. Kennedy, Jr. (Riggs), Chicago. 4/1/38. Riggs letter 30/30/38; reinstated 6/21/38.

E. N. Klein, O. D. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38. Dealing with New Era—using lenses for con. only.

Anna F. Kutza (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38; reinstated 6/21/38.

A. F. Laity (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

W. F. Lehmann, O. D., Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

Carl Maggio (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

1677 J. E. Maurer (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38. Reinstated 6/39, but according to Riggs letter 2/3/41 they moved from present address. M. Raymond then advised they were not reliable account and we should forget.

R. W. Miller, O. D. (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

W. L. Murray (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

A. J. Pritchard (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

W. H. Silge (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

H. Wilansky, Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

Carl E. Olesen (Miller Optical Co.), Evanston, Ill. 4/1/38. Riggs letter 3/30/38—reinstated 12/28/38 ETS lr. 12/5/38.

Fred W. Powers (White-Haines), Ashland, Ky. 6/26/38—his activities in competition to good accounts does not justify his having this license.

Schilling Optical Co. (Riggs), St. Paul, Minn. 10/24/39. ETS letter.

E. B. Stevenson (Dalton-Webb), N. Baltimore, Ohio. 1/26/40. Dalton Webb letter.

Geo. B. Wisden (White-Haines), Springfield, Ohio. 6/15/39. White-Haines letter 6/13/38.

L. S. Grossman (McIntire), Philadelphia. 11/22/39. F. Bernard call report. NG account credit jewelry. Sam Klein recommends we remove.

H. H. Scharfield (White-Haines), Cleveland, Ohio. 10/14/40. Sold to L. Joseph dispensing for Roberts credit jewelry a source thru which we do not want S.L distributed (A. Weber letter 10/2/40).

1678 Strawbridges & Clother (McIntire), Philadelphia. 9/28/38. Department now conducted by people not in accord with our policies. JHV letter 9/29/38.

Albert McConnell, Pittsburgh, Pa. 4/26/38. GWR call report 4/14/38—sell only cheap merchandise—poor credit.

L. R. Olmsted (Riggs), Brownsville, Texas. 2/5/38. Riggs letter 2/5/38—now working for Texas State Optical Co. in Tyler, Texas, and these people do not conduct business on ethical basis.

C. A. Scates (Riggs), Del Rio, Texas. 7/17/39. Riggs letter—now connected with Uptown Optical Co., Houston, Texas.

H. B. Polloch (Southeastern), Norfolk, Va. 1/4/40. Southeastern letter—employed by Salasky Optical Co.

Samuel B. Fellman (Atlas), New Orleans, La. 4/1/38. JHV letter 3/24/38.

George Grunewald, O. D. (Atlas), New Orleans, La. 4/1/38. JHV letter 3/24/38.

M. E. Lukinovich (Atlas), New Orleans, La. 4/1/38. JHV letter 3/24/38.

L. A. Fleisch, New Orleans, La. 3/17/39. JHV call report—all N. O. Distributors requested this removal.

Bachman Optical Company, St. Louis, Mo. 11/21/39—connected with Royal Prov. Corp. racket—Riggs letter. Reinstated 2/40.

W. M. Schofield, Compton, Calif. 1/7/39. JW and DST—objectionable—works for Soss of Long Beach. Reinstated as Niles J. Palmer and W. M. Schofield. 4141 as Stock.

Dr. Claire Barnes (E. A. Sisele Co.), Dunkirk, N. Y. 6/19/39. GWR—impossible.

1678–A RX LICENSEES CANCELLED—WORKING IN DEPARTMENT STORES

H. S. Beucher, O. D. (Riggs Co.), Los Angeles, Calif. 5/21/38. Working for Sears-Roebuck—all wholesalers asked for this removal. (Reinstated 12/40 as Stock Licensee by Riggs.)

Benjamin Katz (Riggs), Elgin, Ill. 12/27/38. Riggs letter 1/23/38—employed by Strauss & Schramm.

H. R. Braunberger (Riggs), La Grange, Ill. 5/13/41. Riggs Letter—now employed by the Mutual Company in Chicago.

L. H. Allgeyer, Minneapolis, Minn. 10/4/40. Riggs letter 9/26/40—advised with Home Furnishing Company in Minneapolis. (Reinstated 4/41 as a Walman Optical Co. account.)

G. F. MacKinder (Dando & Fadden), Nanticoke, Pa. 3/41. F. Bernard call report—now with Auerbach in Hazleton, Pa.

Gustav Rein (Colonial), Endicott, N. Y. 10/15/38. F. Bernard—now employed by W. T. Grandt in Binghamton.

Carl R. Cathey (Riggs), Austin, Texas. 3/1/38. DST call report 2/19/38—now located in Dallas as OD for Harris Department Store which is owned by Gate City Optical Company.

Paul M. West (White-Haines), Huntington, W. Va. 10/4/40. A. Weber call report—practicing in Department Store.

Leo Shawney (N. P. Benson), Milwaukee, Wisc. 2/20/39—now working for Boston Stores. Riggs letter 1/24/39.

1679 RX LICENSEES CANCELLED—CHAIN JEWELRY STORES

C. V. Morley (E. W. Reynolds Co.), Glendale, Calif. 10/24/38. Chain Jewelry Store—JDW verbal.

J. Leon Hosking, O. D. (Riggs), Los Angeles. 10/24/38. With Bushan Chain Outfit—JDW verbal.

K. D. Davis (Riggs), Kearney, Nebr. 12/12/40—now employed by Kindy Optical company (Optometric chain).

Calmer E. Adams, Baltimore, Md. 2/8/40—now with chain jewelry—price advertisers—Hilbert and FLS. Reinstated 9/40.

1680 RX LICENSEES CANCELLED (USING SOFT-LITE LENS FOR CONVENIENCE ONLY)

W. A. Dreher (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

Sidney Shapiro (Riggs), Chicago, Ill. 4/1/38. Riggs letter 3/30/38.

Tamkin Opticians (Riggs), Chicago, Ill. 2/14/38. Riggs letter 2/10/38—gets cheapest work they can.

Caryl Humphreville (Riggs), Clarinda, Iowa. 6/21/38. Riggs letter 6/15/39—not interested, only using license for convenience.

Hugh E. Nair, Jr. (White-Haines), Dayton, Ohio. 9/20/39. GWR call report—always knock Soft-Lite.

Oscar P. Silverman (White-Haines), Dayton, Ohio. 9/20/39. GWR call report—always knock Soft-Lite.

Earle O. Sterzer (White-Haines), Dayton, Ohio. 9/20/39. GWR call report—always knock Soft-Lite.

F. E. Billette (White-Haines), Dayton, Ohio. 9/20/39. GWR call report—always knock Soft-Lite.

1681 RX LICENSEES CANCELLED—WORKING CREDIT JEWELRY STORES

Hubert E. Slocum, O. D. (McIntire), Washington, D. C. 2/14/41. McIntire letter 2/14/41—now working for Kay Jewelry.

A. M. Reiter, O. D. (Southeastern), Albany, Ga. 8/21/39. Working in jewelry store—Southeastern letter 8/18/39.

M. A. Marvelli, O. D. (Riggs), Chicago, Ill. 8/3/38. Riggs letter 7/22/38—now employed by W. A. Pollack.

Harold F. Forbes (Riggs), Peru, Ill. 2/9/38. Riggs letter 1/27/38—now at Brandt jewelry in Chicago—we do not think these people should be licensed.

C. C. Tankel (Twin City), Minneapolis, Minn. 5/25/38. ETS—now working undesirable cahin jewelry store.

P. Krauss (Atlas), Lafayette, La. 8/30/38. Dst letter 7/13/38. Credit jeweler.

Clarence Howel (White-Haines), Zanesville, Ohio. 3/27/39. GWR call report 3/3/39—is watch repairman—sells no Soft-Lite—sells cheap imitation.

J. R. Meek (White-Haines), N. Wilmington, Pa. 11/7/40. ETS not an OD, only jeweler.

A. L. Levi (McIntire), Philadelphia, Pa. 9/23/38. JHV call report—wholesale jewelry house in cheap section.

J. N. Helman (White-Haines), Wilkinsburg, Pa. 5/25/38. GWR call report 4/13/39—jewelry store uses cheaper lens. White-

Haines letter 5/18/38 wrote that Paul Davidson objects to Helman—not active.

Leon H. Kay, Detroit, Michigan. 6/21/38—working Wash-Meyer Jewelry Co., undesirable (GWR letter).

John R. Uglum (Riggs), Brookings, S. D. 12/10/40—located with Zales Credit Jewelry in Nebr. (Riggs letter).

1682 RX LICENSEES CANCELLED (USING LENS OTHER THAN SOFT-LITE)

Nicholas Optical Company (E. W. Reynolds), Los Angeles, Calif. 10/24/38. American Optical Account, JDW verbal.

Bernard Forrest, O. D. (Southeastern), Miami, Florida. 2/8/39. JHV call report—does not use Soft-Lite—Southeastern gave O.K. to remove.

M. M. Davidson (Riggs), Chicago, Ill. 12/5/39. Riggs letter do not intend to use Soft-Lite.

Fred C. Klopper (Riggs), Chicago, Ill. 8/3/38. Riggs letter 7/22/38.

Park P. Swan, O. D. (Riggs), Granite City, Ill. 2/8/38. Riggs letter 1/27/38.

J. W. Dycus, Mount Vernon, Ill. 2/19/38. Riggs letter 2/16/38.

D. B. Phelps, Waterloo, Iowa. 4/24/40 ETS.

F. T. Rupert (Barnet & Ramel), Anthony, Kansas. 6/7/38. Quinton Duffens writes using Azurlite, send work to Barnett & Ramel.

J. L. Kirkpatrick (Quinton-Duffens), McPherson, Kansas. 3/29/39. DST call report 3/23/39—uses only Cruxite.

H. K. & M. Polan (White-Haines), Ashland, Ky. 5/27/38. GWR call report 5/17/38—uses AO lenses—White-Haines advised O. K. to cancel. (This account was reinstated 1/40.)

W. E. Broer (Dempsey Optical Co. Originally), Toledo, Ohio. 6/28/39. GWR letter 6/15/38—no Soft-Lites cheap. (This account was reinstated—White-Haines letter 8/5/38.)

N. L. Fitzgerald (White-Haines), Toledo, Ohio. 6/28/39. GWR letter 6/15/38—cheap—no Soft-Lites.

1683 H. H. Koester (Dempsey Optical Co.), Toledo, Ohio. 6/28/38. GWR letter 6/15/38—all nomax. (This account was reinstated 7/28/38.)

Rogers Optical Co. (Dempsey Optical Co.), Toledo, Ohio. 6/28/38. GWR letter 6/15/38.

R. F. O'Neill (White-Haines), Zanesville, Ohio. 8/18/38. GWR and White-Haines—cheap.

Simon Sculler (White-Haines), Zanesville, Ohio. 5/16/38. GWR and White-Haines—cheap.

Fred Zug (White-Haines), Carnegie, Pa. 8/31/40. A. Weber call report—uses Crookes and Calobar—will no longer deal with White-Haines.

I. Howard (McIntire), Greenfield, Phila. F. Bernard call report 11/29/39—never uses Soft-Lite, buys junk—S. Klein recommended we remove.

W. S. Stafford (Riggs), Independence, Mo. 2/14/38. Riggs letter 2/10/38—does not conduct an ethical business nor does he use Soft-Lite lenses—poor credit and refuses to do business on COD basis.

Dale P. Summers (Barnett & Rangel), Jefferson City, Mo. 4/13/38. ETS letter 4/7/38—sends business to AO.

W. H. Baird (Clinton), Rochester, N. Y. 6/21/38. GWR weekly summary 6/4/39, uses only Velvet-lites.

Mance & Stein (Colonial), Syracuse, N. Y. 9/19/38. GWR call report 8/31/39.

Chas. I. Saks (Colonial), Syracuse, N. Y. 9/19/38. GWR call report 8/31/39.

Walter S. Stillman (Colonial), Syracuse. 9/19/38. GWR call report 8/31/39.

A. A. Oehlert, O. D., Stroudsburg, Pa. 2/23/39. F. Bernard call report 1/30/39.

1684 E. B. Vanderwater, Schenectady, New York. 4/15/40. ER call report.

Lippitt Bros. (Winchester), Cooperstown, N. Y. 9/21/39. FBS call report—all work to AO, doesn't believe in tinted lens—not interested.

Anthony Russo, O. D. (Atlas), New Orleans, La. JHV call report 3/22/38. Uses Continental lenses and Nulids almost exclusively—only interested in S-L for convenience—objected to by all our local Dist.

G. H. Jones (Riggs), Greenville, Texas. 2/14/38. Riggs letter 2/10/38.

F. J. Woods (Riggs), McKinney, Texas. 2/14/38. Riggs letter 2/10/38.

W. E. Mooresfield (Riggs), Waco, Texas. 4/1/39. Riggs letter 3/28/39.

T. J. Reeves (Riggs), Waco, Texas. 4/1/39. Riggs letter 3/28/39. (This account was reinstated 8/40.)

Jerome W. Broughton, Waco, Texas. 4/1/39. Riggs letter 3/28/39. Reinstated 1/41.

R. L. Turner (White-Haines), Toledo, Ohio. 6/28/38. GWR letter 6/15/38. Dead beat, uses no Soft-Lites. Reinstated 2/41.

F. D. Rockefeller, O. D., Tucson, Ariz. 11/16/38.
W. H. H. Gray, O. D., Texarkana, Ark. 10/9/39.
August Seiback, Pittsburg, Calif. 10/24/38.
R. J. Bandy, San Francisco, Calif. 6/8/38.
O. N. Lambert, O. D., Visalia, Calif. 9/1/38.
J. D. Calhoun, O. D., Los Angeles, Calif. 2/17/39.
H. M. Swartfiguer, O. D., Rockville, Conn. 9/15/38.
Paul C. Gillette, O. D., Branford, Conn. 1/4/39.
L. L. Gregory, O. D., Derby, Conn. 6/6/39.
Wm. B. Rock, O. D., Washington, D. C. 6/6/39.
John W. Taylor, O. D., Sarasota, Fla. 5/4/39.
W. D. McGrath, O. D., Elmhurst, Ill. 8/29/38.
Julian Shapps, O. D., Chicago, Ill. 8/10/39.
Neil P. Jensen, O. D., Memence, Ill. 5/18/38.
A. L. Compton, Marion, Ill. 4/12/39.
E. H. Krebs, O. D., Plainfield, Ill. 10/23/39.
Dr. Harry C. Paul, Chicago, Ill. 1/24/40.
George W. Giles, O. D., Kewanee, Ill. 2/9/40.
J. V. Barborka, O. D., Denison, Iowa. 10/23/39.
A. J. Pierson, O. D., New Hampton, Iowa. 9/14/39.
J. Hayes, Jr., O. D., Calamus, Iowa. 4/17/40.
Paul Ketterer, O. D., Independence, Kansas. 4/12/39.
F. W. Parker, O. D., Phillipsburg, Kansas. 5/1/39.
H. W. Fintzel, O. D, Coeur D'Alene, Idaho. 3/18/39.
A. M. Wilton, O. D., Boise, Idaho. 4/17/39.
J. M. Metcalf, O. D., Lancaster, Ky. 12/13/39.
C. E. J. Wilson, Somerville, Mass. 10/7/38.
R. E. Boemig, O. D., Woodsville, N. H. 6/15/39.
Joseph H. Shute. O. D., Glassboro, N. J. 5/19/39.
M. A. Jenkins, O. D., New Bedford, Massachusetts. 2/24/39.
William D. Thiesfeldt, O. D., Boston, Mass. 3/25/39.
Carl Nelson, O. D., Worcester, Mass. 7/26/39.
Glenn C. Hill, Detroit, Mich. 6/15/38.
Hans J. Heram, O. D., Elbow Lake, Minn. 9/14/39.
Gilbert B. Ellestad, O. D., Lanesboro, Minn. 4/12/39.
Dr. L. S. Smith, O. D., Kosciusko, Miss. 7/10/39.
1686 Dr. Albert B. Laird, Kansas City, Mo. 5/18/38.
H. I. Player, O. D., Kansas City, Mo. 9/16/38.
Harry Diehl, O. D., St. Louis, Mo. 10/13/38.
F. H. Gross, O. D., Canton, Mo. 2/22/39.
Dr. Alfred Wahlstrom, O. D., Oakland, Nebr. 6/16/39.
O. M. Shallow, O. D., Roundup, Mont. 7/12/39.
W. H. Monahan, O. D., Williston, N. D. 4/17/40.

L. H. Branchaud, O. D., Cavalier, N. D. 10/15/38.
C. G. Conyne, O. D., Mandan, N. D. 10/23/39.
Harold Meshel, O. D., New York, N. Y. 4/5/39.
B. J. Churchill, O. D., Oneida, N. Y. 6/6/39.
J. Gray Collins, E. Liverpool, Ohio. 5/17/38.
Thomas Bros. Opt. Co., Cleveland, Ohio.
W. A. Bundy, Miami, Okla. 5/25/38.
Frank N. Ansel, O. D., Duncan, Okla. 8/15/39.
L. C. Weeling, Bristol, Pa.
H. I. Kistler, O. D., Allentown, Pa. 10/24/39.
J. H. Lepsch, Clarion, Pa. 10/18/39.
F. C. Gantt, Newport, Pa. 3/28/39.
Dr. W. R. Ferrell, Shavertown, Pa. 9/19/39.
P. W. Jacoby, O. D., York, Pa. 10/24/39.
L. J. Reznor, O. D., Pt. Allegany, Pa. 3/9/40.
H. G. Correll, O. D., Allentown, Pa. 3/13/40.
Dr. E. H. Anderson, Florence, S. C. 4/11/38.
S. V. Mallory, O. D., Flandreau, S. D. 11/12/38.
C. G. Blakeslee, O. D., Gettysburg, S. D. 1/18/39.
Robert H. Austin, O. D., Jacksboro, Texas. 4/12/39.
J. D. Cassell, O. D., Lampasas, Texas. 9/14/39.
A. E. Richmond, O. D., Seymour, Texas. 12/5/39.
R. I. Lee, O. D., Weatherford, Texas. 9/14/39.
F. McFadden, O. D., Rutland, Vt. 2/21/39.
V. B. Gilbert, O. D., Richmond, Va. 11/14/38.
A. F. Jahnke, O. D., Jr., Richmond, Va. 11/14/38.
A. J. Metz, O. D., Richmond, Va. 11/14/38.
C. H. Rudd, O. D., Richmond, Va. 11/14/38.
J. D. Watkins, O. D., Petersburg, Va. 12/28/39.
A. O. Solberg, O. D., Everett, Wash. 3/18/39.
W. A. Ingalls, O. D., Port Angeles, Wash.
1687 L. E. Knoblock, Milwaukee, Wis. 3/30/38.
Louis E. Shaw, Racine, Wis. 8/25/38.
E. M. Odekirk, O. D., Manawa, Wis.
Mrs. Elizabeth B. Mackehnie, O. D., Hillsboro, Wis. 3/23/40.
H. C. Saul, O. D., Douglas, Wyoming. 3/20/39.

1688 RX LICENSEES REMOVED FROM LIST—OUT OF BUSINESS

Paul Leigh, O. D., Los Angeles, Calif. 12/25/38. (Nox Rx in Redwood City.)
C. A. Olson, O. D., Kingsburg, Calif. 6/3/39.
Albert B. Perel, O. D., Los Angeles, Calif. 10/24/38.
Clara Belle Zelinsky, O. D., Los Angeles, Calif. 2/17/39.
H. B. Waters, O. D., Denver, Colo. 11/22/38.
S. C. Goldfarb, O. D., Winsted, Conn. 5/6/38.

David Love, O. D., Decatur, Ga. 3/25/40.
Harris Optical Company, Atlanta, Ga. 4/7/38.
Montgomery Optical Co., Atlanta, Ga. 4/7/38.
John J. Duff, O. D., Wrightsville, Ga. 4/13/38.
E. L. Butts, O. D., Milledgeville, Ga. 10/27/39.
S. M. Pizer, O. D., Chicago, Ill. 10/23/39.
Joseph F. Mayfield, O. D., Havana, Ill. 10/24/39.
Apex Optical Service, Chicago, Ill. 7/9/40.
Dr. D. W. Conner, Brownstown, Ind. 10/23/39.
Robert A. Atlas, O. D., Sioux City, Iowa 1/20/40.
J. N. McFadden, O. D., Oelwein, Iowa 2/17/40.
Melvin & Badger Company, Boston, Mass. 5/5/38.
Dr. Paul E. Swenson, Springfield, Mass. 10/8/38.
Sennott & Alperin, Cambridge, Mass. 11/24/39.
Dr. G. L. Kneeland, Portland, Me. 4/1/38.
Brewster Sedgwick, O. D., Bath, Me. 2/23/39.
Dr. A. D. Kersey, Baltimore, Md. 5/1/39.
Dr. Frederick H. Witzke, Baltimore, Md. 5/1/39.
Turner & Rubin, O. D., Greenville, Miss. 4/13/39.
Dr. Blanche Wickenseimer, Vicksburg, Miss. 3/26/38.
Neil C. Morrison, Fairbury, Nebr. 3/20/39.
C. L. Moore, Lincoln, Nebr. 11/28/39.
Mr. M. E. Feingold, Trenton, N. J. 11/16/38.
Geo. E. Zimmerman, Rochester, N. Y. 6/4/38.
Mr. Fred Annucci, Royal Opt. Co., New York, N. Y. 5/19/38.
Downey & Murtha, Brooklyn, N. Y. 4/5/39.
Kagan Optical Corp., New York, N. Y. 3/31/39.
Mr. Harry J. Desmond, Albany, N. Y. 4/9/38.
W. J. Morse Opt. Co., Rochester, N. Y. 2/9/39.
Michael J. Burns, Watervliet, N. Y. 12/16/39.
W. B. Fisher, O. D., White Plains, N. Y. 7/13/39.
Louis Newman, O. D., Buffalo, N. Y. 3/9/40.
J. P. Simcox, O. D., Buffalo, N. Y. 3/9/40.
Dr. J. O. Baxter, Jr., Fayettesville, N. C. 6/10/38.
H. L. Winters Company, Minot, N. D. 11/12/38.
Dr. W. Ormsby, Pierpont, Ohio. 9/18/39.
Dr. C. M. Wilson, Salem, Ohio. 10/2/39.
Blase & Blase Co., Youngstown, Ohio. 8/23/39.
Edwin May, O. D., Idabel, Okla. 5/23/38.
L. A. Pegel, O. D., Philadelphia, Pa. 9/29/38.
Tom C. Hill, O. D., Wilkes-Barre, Pa. 10/11/39.
Ralph E. Wick, O. D., Rapid City, S. D. 10/24/39.
Tri-State Opt. Dispensary, Memphis, Tenn. 8/22/39.
Leon L. Hoffman, O. D., Memphis, Tenn. 3/16/40.
J. D. Kethley, O. D., Munday, Texas 8/18/38.

S. A. Stevens, O. D., Ogden, Utah 3/22/39.
Dr. Don C. James, O. D., Salt Lake City, Utah. 1/24/39.

1689 RX LICENSEES REMOVED FROM LIST—CANNOT LOCATE

Dr. Glenn Nellis, Los Angeles, Calif. 1/16/39.
Garvin Moore, O. D., St. Petersburg, Fla. 9/16/38.
Sidney R. Unwin, O. D., Los Angeles, Calif. 10/24/38 (Now Rx in San Fernando.)
Alf. Johnsen, Chicago, Ill. 10/7/38.
Arthur V. Friedman, O. D., Danville, Ill. 4/11/38.
R. F. Stebor, O. D., Elmhurst, Ill. 10/7/38.
W. P. Reichert, O. D., Cairo, Ill. 10/23/39.
Dr. L. P. Johnson, Pawnee City, Nebr. 7/6/38.
Leo Platt, O. D., Galveston, Texas. 4/12/39.

1690 RX LICENSEES REMOVED FROM LIST—RETIRED

Dr. L. Skinner, Tucson, Arizona. 8/31/38.
E. J. Williams, O. D., Columbus, Ohio. 9/14/39.
M. A. Rhodes, O. D., Johnstown, Pa. 12/13/38.
A. E. Harte, O. D., Evansville, Wis. 3/23/40.

1691 RX LICENSEES REMOVED FROM LIST—SOLD BUSINESS

L. W. Pierce, O. D., Pomona, Calif. 2/17/31.
L. V. Somes, Santa Rosa, Calif. 5/24/39.
W. B. MacDonald, O. D., Chicago, Ill. 4/29/39.
S. S. Hyde, O. D., Amherst, Mass. 7/8/38.
Ward C. Lincoln, O. D., Athol, Mass. 9/39.
Ernest Howarth, Fall River, Mass. 4/30/38.
George Corth, Inc., Kearney, N. J. 3/25/40.
H. C. Midlam, Rome, N. Y. 4/20/40.
H. S. Browne, M. D., Ponca City, Okla. 3/20/39.

1692 CANCELLED RX LICENSEES FOR MISC. REASONS

Lantz Optical Company (Riggs), St. Cloud, Minn. 3/19/40. Manufactures imitation Panoptik bifocals (RGL).

David Diamond (Colonial), Portland, Maine. 11/26/39. Supplying chain outfit—wholesale work. Colonial letter 11/13/39.

Collier Powell (White-Haines), Dayton, Ohio. 10/4/40. Now working for Clinic in Dayton—outlet for Midwest Optical Co. (ETS.)

Wm. J. Bertie, O. D., Los Angeles, Calif. 5/21/38. All wholesalers asked for this removal. JDW call report 4/21/38.

Wm. Breig, Oakland, Calif. 10/24/38. DST verbal. NG.

H. Carroll Nixon, Oakland, Calif. 10/23/39. JDW verbal.

C. Roger Brissman, Ontario, Calif. Cancelled in 1938 by DST verbal. (Reinstated 3/1/39 re DST thru Bradley Opt. Co.)

K. J. West, O. D., Daytona Beach, Calif. 5/38. Southeastern letter.

Swenson & Pearson, Chicago, Ill. 5/8/39.

N. Bellamore, New Orleans, La. 7/8/40. RGL recommendation.

United Optical Co., New Orleans, La. 3/24/39. RGL recommendation.

S. Carleton, Nw Orleans, La. 12/28/38. Remove as he only deals in hearing instruments. DST call report 12/13/38.

H. S. Tuminello, New Orleans. 3/24/39. RGL letter 3/22/39. (This account reinstated 2/40.)

Harold Riggert, Seward, Nebr. 8/5/40. Riggs letter—reinstated as Stock by Riggs 4/14/40.

C. David Thomson, Gallup, N. Mex. 5/25/38. Riggs letter—Dallas 5/11/38.

R. W. Kelner, Clark, S. D. 3/24/39. Not a Registered OD—should not have license. Riggs letter 3/20/30.

Russell G. Johnson, Memphis, Tenn. 9/20/39. Not in a position to use Soft-Lite. (Southeastern letter.)

William Beard, Tullahoma, Tenn. 9/23/40. Dr. Beard requested cancellation of all Licenses issued to him. Southeastern letter.

E. G. Parham, Memphis, Tenn. 6/7/39. No reason given ok'd by RGL—Southeastern letter 6/7/39. Reinstated 1/41 by Southeastern.

Kirkland Optical Co., Utica, N. Y. 4/24/39. RGL recommendation.

Denny's, Wilson, N. C. 1/8/40. R. A. Smith letter.

Wm. P. Reed, Mt. Vernon, Washington. 10/23/39. Working for Shuron Optical Co.

M. M. Bushan, Los Angeles, Calif. 5/21/38. All wholesalers asked for this removal. JDW explained to him how it was impossible.

Reinstated 3/3/39 as stock. For us to continue—call report 4/21/38.

1693 Edmund E. Schulte, O. D. Detroit, Michigan. 8/21/39. Now working for Meyer Jewelry Company. (Letter 8/7/39.)

L. J. Zachry, O. D. Fort Worth, Texas. 2/27/40. FLS letter.

T. A. Tucker, Fort Worth, Texas. 2/27/40. FLS letter.

Gray Optical Company, Toledo, Ohio. 6/28/38. GWR letter 6/15/38.

1694 RX LICENSEES REMOVED FROM LIST—MISCELLANEOUS

Mr. Thomas Johnson, Chicago, Ill. 10/24/39. (Working for Riggs.)

Dr. George Brunner, Baltimore, Md. 5/1/39. (Benchman.)

C. A. Scates, O. D., Del Rio, Texas. 7/17/39. (Now with Uptown Opt. Co.)

R. L. Russell, O. D., Farmersville, Texas. 10/10/39. (No longer licensed Optometrist.)

Mr. H. B. McLaughlin, Houston, Texas. 7/11/38. (Resigned as Dispenser Now with Amer. Opt. Co.)

1695 *Defendants Exhibit N*

SPORT-LITE LENSES

1696 *Defendants Exhibit O*

OVERGLAS LENSES

1697 *Defendants Exhibit P*

SINGLE VISION LENS ENVELOPE

1698 *Exhibit Q*

BAUSCH & LOMB OPTICAL CO.

Established 1853

ROCHESTER, NEW YORK.

AUGUST 20, 1936.

SOFT-LITE LENS COMPANY,
119 West 57th Street, New York, N. Y.

Attention of Mr. Nathaniel Singer.

MY DEAR NAT: I have been reviewing the recent advertisement appearing in our magazine on the subject of antiglare lenses and at the same time I have reviewed the letter written by Scott Sterling under date of July 27 in answer to the request of Ray Landis. This request of Ray's was that we should alter this copy and remove from it some of the statements which were embodied therein. I think the letter of Sterling's answers in a very definite and satisfactory way the questions which were asked and at the same time it seems to me that the viewpoint expressed represents quite satis-

factorily the position which I believe our company should take in this kind of a development.

Beyond this it does seem to me quite essential that we make every effort to avoid any misunderstandings between your company and ours. This desire on our part is prompted not only because of the very satisfactory business relationships which have existed over these many years, but because of the intimate personal friendships which exist between the personnel of the two companies. We have always valued very highly the fine amount of business which the Soft-Lite Company has done with our factory and we believe that the two organizations have been mutually beneficial to each other. It is our desire that this relationship should definitely and effectively be continued and we shall aim every effort to continue and even extend the prestige and position of Soft-Lite lenses in the trade. As I have stated to you many times, the position of your company is quite justified in the light of past operations, predicated, however, on the sufficient differential in trade prices which in turn make possible the functioning of your sales organization. We hope that you may be able to continue as you are now doing in the distribution of these lenses at a price which can justify these continued activities.

While we have made these efforts to perfect and improve the production of Soft-Lite lenses out of our factory, it does seem to us quite necessary that we meet the needs of our distributing organization by, from time to time, being able to supply them with other types of tinted glass to meet specific needs. The
1699 demands on the part of our distributors for a product which could be sold in competition with Calobar, we felt, should naturally be met and with that idea in mind we found it necessary to make known our anti-glare lens facilities. This we have not looked upon as in any respect a competitor of Soft-Lite and for that reason have not felt that by meeting this need we were in any way interfering with the prerogatives of the Soft-Lite Company. In the various discussions on this question, reference has been made to the work of Spitler and a series of selective filter lenses. This whole question and the possibility of the Soft-Lite Lens Company supplying these different colored glasses presumes that Bausch and Lomb will cease its selling efforts along these lines, referring the distribution of all colored glasses to the Soft-Lite Lens Company. This whole subject has been discussed by us many times and I have been under the impression that we made our position perfectly plain. It is our belief that your company, by years of experience, has demonstrated beyond a question of doubt that its future success is dependent primarily on the effectiveness with which the distribution of Soft-Lite lenses is carried forward.

From my own personal standpoint and not that it is the business of our company, it would seem to me that your continued success must essentially be built on this type of distribution. With this idea in mind we feel that Bausch and Lomb should handle directly the distribution of its other types of colored glass.

We have no plants in mind for going beyond what we are now doing and we trust that the distribution of Soft-Lite glass will continue to be so successful that it may not be necessary for us to actively engage in the distribution of any colored glass. We told you sometime ago of experimental investigations which we have made on other types of colored glass, feeling that we must keep ourselves prepared to meet the needs of the optical profession. We also told you that when we find it necessary to add to our line any glass that may perhaps interfere with your distribution, we will certainly notify you.

There is nothing new in this recitation but it does seem to us advisable to record our position to avoid any future misinterpretation of our activities. We, furthermore, believe that this statement of our position is in accordance with your personal understanding of our relationship.

We want to congratulate you on the fine job which you are continuing to do with Soft-Lite lenses and we have every reasonable hope that this may continue for many years to come.

Very truly yours,

BAUSCH & LOMB OPTICAL COMPANY,
HERBERT EISENHART.

M. H. Eisenhart: H.

1700 *Exhibit R*

SOFT-LITE LENS CO., INC.

Soft-Lite Lenses, Greater Comfort, Better Appearance

Squibb Building, 745 Fifth Avenue

NEW YORK CITY

DECEMBER 28, 1939.

GENTLEMEN: In order to conform with the general industry trend, we have prepared Fair Trade Practice Act contracts between our Wholesale Distributors and ourselves. We have given careful consideration to this subject and are satisfied that the procedure provided is advantageous to our Distributors and to us.

Accordingly, we would appreciate it if you will sign both copies of the enclosed contract and return them to us. One copy will

then be signed by us and returned for your file. Thank you for this cooperation.

Very truly yours,

SOFT-LITE LENS COMPANY, INC.
R. G. LANDIS.

R. G. Landis/D.

1701 *Exhibit S*

SOFT-LITE LENS COMPANY, INC.

New York City

MANUFACTURER-DISTRIBUTOR FAIR TRADE ACT CONTRACT

This Agreement, made this day of 19 ; between Soft-Lite Lens Company, Inc., a corporation of the State of New York (hereinafter calle dthe "Manufacturer"), acting on its own behalf, and

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a corporation organized under the laws of---------- (hereinafter called the "Distributor"), Witnesseth:

Whereas, the Distributor is engaged in the distribution of commodities hereinafter specified (hereinafter referred to as the "Products"), which bear, or the label, package or container of which bears, the trade-mark, brand or name of the Manufacturer, and which are in free, fair and open competition with commodities of the same general class produced or distributed by others; and

Whereas, said trade-marks, brands and name constitute a valuable part of the good will of the Manufacturer's business and are of importance in the handling, selling and distribution of said Products; and

Whereas, all the States of the United States, with the exception of Delaware, Missouri, Texas and Vermont, have enacted Fair Trade Practice Acts permitting minimum prices to be established for the resale of commodities as above described, in intrastate transactions and under conditions designated in the said Acts, and the so-called Miller-Tydings Act, being Title VIII of the District of Columbia Revenue Act of 1937, having been duly enacted; and

Whereas, the Manufacturer and the Distributor desire to avail themselves of the benefits of said laws and to prevent the said

Products from being made the subject of injurious and uneconomic practices, and further desire to prevent the lessening of the value of said trade-marks, brands and name through such practices; and

Whereas, the Distributor is engaged in the sale of the said Products at wholesale or retail, or both;

1702 Now therefore, in consideration of the premises and of the agreements herein and also in consideration of the sale and delivery of such products as the Manufacturer or its subsidiary corporations may make to the Distributor from time to time while this Agreement shall be in effect and the purchase thereof by the Distributor, the parties hereto agree as follows:

1. The Distributor will not, either directly or indirectly, advertise, offer for sale or sell in any state in which at the time of such sale a Fair Trade Act shall be in effect, to any person, firm or corporation, at wholesale, any of said Products at less than the minimum wholesale resale prices then in effect for said Products as established hereunder from time to time by the Manufacturer, and will not, either directly or indirectly, advertise, offer for sale or sell in such state to any person, firm or corporation, at retail, any of said Products at less than the minimum retail resale prices then in effect for said Products as established hereunder from time to time by the Manufacturer.

2. For the purpose of this Agreement, a sale at wholesale shall mean every sale to any person, firm or corporation, other than a sale to a consumer for use, and a sale at retail shall mean a sale to a consumer for use.

3. The Products to which this Agreement applies are those enumerated in a schedule attached hereto, marked Schedule I, and made a part hereof. The Manufacturer may at any time and from time to time add to the Products specified in said schedule or withdraw from the operation of this Agreement any Products at any time listed in said schedule. Such addition or withdrawal of Products shall be effective for the purpose of this Agreement when a notice describing the change in the list of Products shall have been given by the Manufacturer to the Distributor.

4. Minimum wholesale and retail resale prices hereby established by the Manufacturer are set forth in said schedule. The Manufacturer may at any time and from time to time change said minimum wholesale and retail resale prices by written notice to the Distributor.

5. Lists of all current minimum wholesale and retail resale prices for said Products shall be available to all wholesale and retail customers of the Manufacturer at the offices of the latter.

6. The Distributor will not sell any of said Products below the minimum resale prices established by the Manufacturer as aforesaid by giving any article of value in connection with the sale of

the Product or by making any concession (whether by the giving of bonuses or consideration of money, lower prices on other articles, or otherwise) in connection with the sale of any of said Products, or by selling except as provided for in paragraph 7 hereof any of said Products in combination with any other commodity or through any other device whatever.

7. The sale of frames or mountings attached to lenses in filling a prescription is hereby authorized; provided, however, if the frame or mounting so attached is not included among said Products, a charge must be made for the frame or mounting which is equal to its cost plus a reasonable profit thereon.

8. In the event of any report being made to the Manufacturer of a sale by the Distributor at less than the minimum resale price fixed by the Manufacturer under the terms of this Agreement, the Distributor will permit an authorized representative of the Manufacturer to examine the Distributor's books and records to determine whether there has been a violation of this Agreement.

9. The Manufacturer in good faith will employ all appropriate means, which in the circumstances shall be reasonable, including legal proceedings if such other means fail, to prevent, and to
1703 enforce the discontinuance of, any violation of said minimum price stipulations by any competitor of the Distributor, whether the person so violating or threatening such violation is or is not a party to a Fair Trade Contract with the Manufacturer covering the Products involved in such violation or threatened violation; however, the Manufacturer shall not be obligated to take any legal or other action unless in the opinion of the Manufacturer or its counsel such action is warranted and advisable under the then existing conditions.

10. The parties hereto recognize and agree that it is impossible to determine the actual damage which may result to the Manufacturer from sales made by the distributor in contravention of the terms of this Agreement, and they therefore agree that the Distributor shall pay to the Manufacturer as liquidated damages the sum of Five Hundred Dollars ($500) for each and every violation of any of the provisions of this Agreement by the Distributor. If, and as often as, the Manufacturer shall institute any proceeding or action in any court against the Distributor for any breach of this Agreement, the Distributor agrees, in addition to all court costs, to pay the Manufacturer a reasonable attorney's fee, and other expenses incurred by the Manufacturer in maintaining and administering this Agreement with the Distributor for such violation, in all instances where the court shall determine that the Distributor has violated the terms of this Agreement. It is further agreed that in addition to other legal

rights and remedies, the Manufacturer shall be entitled to injunctive relief against any and all actual or threatened breaches of this Agreement.

11. In the event of any question arising under this Agreement with reference to any resale of products, this Agreement shall be interpreted and construed in accordance with the laws of the state wherein said resale took place.

12. In the event of any violation or threatened violation of this agreement, any person injured or damaged, or who may be injured or damaged thereby, shall, in addition to any other rights or remedies, be entitled to an injunction restraining such violation or threatened violation.

13. The parties hereto recognize that the Fair Trade Acts of different states provide that sales may be made without reference to any resale price maintenance agreement in certain cases designated in the said Acts, and that the cases so designated are different in different states. It is therefore agreed by the parties hereto that a resale of the Products may be made without reference to this Agreement in any cases designated for resales without reference to resale price maintenance agreements in the Fair Trade Act of the state wherein any such resale is made.

14. This Agreement may be canceled by either party hereto on ten (10) days' written notice to the other; but termination by Distributor shall not affect the rights or obligations of either of the parties hereto under any applicable Fair Trade Act whether now or hereafter enacted, or by reason of any contract made pursuant to any such Act.

15. The parties hereto agree that this Agreement shall apply to resales of the Products, or any of them, only at such times as agreements of the character of this Agreement shall be lawful as applied to intrastate transactions, under any statute, law or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the Products in question are to be transported for resale.

16. In the event that any provision or part of this Agreement shall be held invalid, the remainder of this Agreement shall, nevertheless, be deemed valid and binding upon the parties hereto. No oral changes in this printed form of Agreement shall be binding.

1704 17. Any notice given under any of the provisions of this Agreement shall be well and sufficiently given by delivering the same personally to the party hereto to whom it shall be addressed or by mailing the same in a sealed postpaid envelope addressed to such party at its address given in this Agreement.

18. This Agreement shall become effective as of the day and year first above written.

In witness whereof, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned.

SOFT-LITE LENS COMPANY, INC.
By_____
_____
Distributor.
By_____
Address_____
_____

1705 *Exhibit S–1*

STATES COVERED BY ATTACHED LIST

Alabama.
Arizona.
Arkansas.
California.
Colorado.
Connecticut.
Delaware.
District of Columbia.
Florida.
Georgia.
Idaho.
Illinois.
Indiana.
Iowa.
Kansas.
Kentucky.
Louisiana.
Maine.
Maryland.
Massachusetts.
Michigan.
Minnesota.
Mississippi.
Missouri.
Montana
Nebraska.
New Hampshire.
New Jersey.
New Mexico.
New York.
North Carolina.
North Dakota.
Ohio.
Oklahoma.
Oregon.
Pennsylvania.
Rhode Island
South Carolina.
South Dakota.
Tennessee.
Texas.
Utah.
Vermont.
Virginia.
Washington.
West Virginia.
Wisconsin
Wyoming.

1706 SOFT-LITE WHOLESALERS WHO HAVE SIGNED FAIR TRADE ACT CONTRACT

Atlas Optical Company, Inc., New Orleans, La.
N. P. Benson Optical Company, Minneapolis, Minn.
Berks Optical Company, Reading, Pa.
Blue Grass Optical Company, Lexington, Ky.

Belgard, Inc., Chicago, Ill.
Bartels Optical Company, Chicago, Ill.
Bradley Optical Company, Los Angeles, Calif.
Burleigh Optical Company, Tilton, N. H.
Charles E. Carlson, Inc., Brooklyn, N. Y.
Boll & Lewis Optical Co., Chicago, Ill.
Brent Optical Company, Altoona, Pa.
Central States Optical Company, Chicago, Ill.
City Optical Company, Wilmington, N. C.
Clinton Optical Company, Rochester, New York.
Colonial Optical Company:

New York.
New Jersey.
Massachusetts.
Maine.
Connecticut.
Rhode Island.
Vermont.

Connecticut Optical Company, Waterbury, Conn.
Dalton-Webb Optical Company, Toledo, Ohio.
Dando & Fadden, Scranton, Pa.
DeWein Optical Company, Buffalo, N. Y.
Dow Optical Company, Chicago, Ill.
Diederich Optical Company, Los Angeles, Calif.
Edelstein Bros., Syracuse, New York.
1707 B. K. Elliott Company, Pittsburgh, Pa.
The Fort Wayne Optical Co., Fort Wayne, Ind.
Fox Optical Company, Indianapolis, Ind.
Louis Friedlander, Inc., New York City.
Geneva Optical Company, Geneva, New York.
The Gracy Wolf Optical Company, Akron, Ohio.
Gregory Optical Company, Jackson, Michigan.
Hilbert Optical Company, Baltimore, Maryland.
A. E. Holden, Houlton, Maine.
Houchin Optical Company, Newark, New Jersey.
Hygrade Optical Company, Inc., New York, N. Y.
Henry Hennessey, Inc., New Orleans, La.
Johnston Optical Company, Detroit, Michigan.
F. W. King Optical Company, Cleveland, Ohio.
Kirstein Optical Company, Rochester, N. Y.
Robert Levin, Inc., New York, N. Y.
Lehmann Optical Company, New York, N. Y.
J. E. Limeburner Company, Philadelphia, Pa.
Linden Optical Company, Allentown, Pa.
McIntire, Magee & Brown Company:

Pennsylvania.
Maryland.
District of Columbia.
Delaware.
New Jersey.

F. H. McGary Optical Company, Bangor, Maine.
McLeod Optical Company, Providence, R. I.
1708 Miller Optical Company, Chicago, Ill.
Milwaukee Optical Mfg. Company, Milwaukee, Wisc.
August Neuse & Company, New York City.
Newman Brown Optical Company, Buffalo, N. Y.
Niagara Optical Company, Buffalo, N. Y.
North Star Optical Company, New York, N. Y.
Philadelphia Optical Company, Philadelphia, Pa.
Potter & Schnackenberg, New York, N. Y.
Quinton-Duffens Optical Company, Topeka, Kansas.
Reading Optical Company, Reading, Pa.
Reese Optical Company, Mansfield, Ohio.
Riggs Optical Company (Chicago):

Illinois.
Iowa.
Arkansas.
Kansas.
Louisiana.
Minnesota.
Missouri.
North Dakota.
Nebraska.
Oklahoma.
Colorado.
Wisconsin.
New Mexico.
Texas.
Wyoming.
South Dakota.

Riggs Optical Company (San Francisco):

Arizona.
California.
Idaho.
Montana.
Oregon.
Utah.
Washington.

1709 Schulte Optical Company, Detroit, Michigan.
Seidel Optical Service, New York, N. Y.
Schroeder-Miller Optical Company, Chicago, Ill.
Schulte & Fox Optical Laboratory, Detroit, Michigan.
Silbert Optical Company, Buffalo, New York.
Southeastern Optical Company, Inc.:

Alabama.
Florida.
Georgia.
Mississippi.
North Carolina.
South Carolina.
Virginia.
Tennessee.

Southwest Optical Company, Los Angeles, Calif.
George W. Spratt Optical Company, Los Angeles, Calif.
G & F Stannard Opt. Co., Cincinnati, Ohio.
M. E. Stern, Inc., New York, N. Y.
Superior Optical Company, Los Angeles, Calif.
Service Optical Company, Lewiston, Maine.
Southerland-Helms Company, Charlotte, N. C.

Twin City Optical Company, Minneapolis, Minn.
Twin Ports Optical Company, Duluth, Minn.
Uhlemann Optical Company, Chicago, Ill.
Walman Optical Company, Minneapolis, Minn.
Western Optical Company, Salt Lake City, Utah.
Wilson & Halford Optical Company, Boston, Mass.
Winchester Optical Company, Horseheads, New York.
Joseph Greiff, Inc., Brooklyn, New York.

1710 White-Haines Optical Company:

Illinois.
Indiana.
Kentucky.
Ohio.
Maryland.
Michigan.
Pennsylvania.
West Virginia.

1711 9/26/41.

We have no signed fair trade contract for the following distributors:

Belgard Spero, Inc.
Bishop Optical Co.
Dorr Optical Co.
Dubois Optical Co.
Easton Optical Co.
Hubbard Leslie Opt. Co.
Hudson Valley Optical Co.
Jenkel Davidson Optical Co.
Kalamazoo Optical Co.
Klauer Optical Co.
L. H. Kosh & Co.
Lehigh Optical Co.
Maves Optical Co.
McClenaghen Opt. Co.
S. R. Nay Optical Co.
Ohio Optical Co.
Paramount Optical Co.
Phoenix Optical Co.
Ray Optical Co.
Tennessee Optical Co.
Wallace Optical Co.
York Optical Co.

1712 *Exhibit T*

SOFT-LITE LENS COMPANY, INC.

Advertising & Selling Expenses for 12½ Years

	Advertising	Selling	Adver. bonuses	Total
1929	$29,148.86	$27,400.45	$27,613.51	$84,162.82
1930	39,572.13	40,483.18	21,377.77	101,433.08
1931	22,086.06	57,093.97	12,541.18	91,721.21
1932	25,995.22	42,271.66	7,103.78	75,370.66
1933	23,217.45	55,435.02	6,900.55	85,553.02
1934	51,372.50	88,449.10		139,821.60
1935	54,211.84	92,124.28		146,336.12
1936	54,445.82	99,805.53	25,877.47	180,128.82
1937	76,783.73	101,360.38	28,754.49	206,898.60
1938	68,428.03	97,265.86	24,639.13	190,333.02
1939	85,395.70	100,738.63	26,205.32	212,339.65
1940	98,856.88	108,178.04	24,345.85	231,380.77
6 Mos. 1941	72,413.12	55,413.87	15,134.50	142,961.49
	701,927.34	966,019.97	220,493.55	1,888,440.86

ADVERTISING EXPENSES

Items	Year 1930	Year 1931	Year 1932	Year 1933	Year 1934	Year 1935	Year 1936	Year 1937	Year 1938	Year 1939	Year 1940	6 months 1941	11½ years total
Advertising Allowance	$21,377.77	$12,541.18	$7,103.78	$6,900.55			$25,877.47	$28,784.49	$24,689.13	$26,205.32	$24,845.85	$15,134.80	$192,880.04
Advertising Sales Aids	5.78												5.78
Ash Trays	38.25												38.25
Ralph Barstow	328.91												328.91
Boats	98.78												98.78
B. V. I. Booklets	53.42												53.42
Care of Eyes Booklet	89.95					340.16						193.88	323.99
Cathedral Pictures	109.61	124.23	30.80			15.00							279.32
Clip Sheet	430.26												430.26
Consumer Folders	2,200.92	330.70	353.44	754.59	$3,918.40	2,090.41	1,624.63	589.96	792.15		595.31	712.53	13,963.04
Contributions	456.03	850.00	375.00	250.00	300.00	600.00	700.00	800.00			950.00	500.00	5,781.03
Conventions—Meetings	1,448.48	372.00	519.96	532.44	1,249.74	2,572.33	2,234.93		1,485.92	5,421.37	3,614.77	1,370.41	20,222.35
Counter Mats	171.30	7.72		90.00	3,287.84								3,556.86
Folder Rack	65.65												65.65
Freight	64.02												64.02
Glare Treatise—Testimonials	100.00	374.02											474.02
Glare Booklets—Glarestrain	279.95							148.40	1,211.53				1,639.88
Introductory Broadside	781.47					402.56							1,184.03
Lens Cleaners — Kleeno Kloths	−235.40	−153.64	−267.10	−560.21	−139.93	898.49	1,396.60	−180.22	338.72	−2,307.38	−432.36	1,116.30	−406.13
Letter Series	50.00		49.00	308.67	169.59	48.32	109.04	6.23		1,192.29	2,224.99		2,158.13
Materials — Gifts — Good Will	334.50		112.00	220.16									666.66
Medallions and Photo Displays	72.61												72.61
Memorettes	2,878.07	2,417.20	1,960.25	1,480.64	2,351.22	3,327.21	1,972.83	1,341.82	1,341.50	1,384.72	677.01	950.51	22,082.98
Labels and Stickers	292.93	77.07	188.82	287.32	302.59	390.37	316.70	437.08	426.96	197.25	144.60	170.30	3,231.99
Miscellaneous	1,197.78	1,025.24	697.69	1,086.33	1,046.82	1,477.48	272.77	377.32	1,315.61	1,395.62	1,363.92	-916.61	12,173.23
Modern Glare Conditions	628.62												628.62
New Idea Sales Bulletins	588.74												588.74
Newspaper Advertising Series	249.31		177.16	315.75	187.16	588.74	855.97	318.10	487.87	384.69	667.25	807.29	4,739.29
Open Forum	331.65												331.65
Optical Research Bulletin	634.50												634.50
Parcel Post	840.90		460.82	607.87	80.95	874.64	65.95	786.04	840.38	725.90			5,507.50
Pleasure and Profit Broadside	256.28												256.28

Portfolios — Salesmen's Quart	.637 23						359.79	819.80			3,566.56		5,383.08
Question and Answer Booklet	251.13	−7.20											243.93
Radio Broadside—Series	1,350.00			71.57	154.87	20.97	60.00	26.60			22.50		1,706.51
Ra-On Signs	2,161.77	11.21	115.82									22.50	2,288.80
Reprints—Direct Mail	26.10	74.43	248.46		435.87	952.09	278.24	179.80	298.92	487.91		59.17	3,041.52
Retailers Service	30.00												30.00
Frank Romer	3,174.00												3,174.00
Sales Bulletin	72.70												72.70
1740 Sales Slants	817.87		779.97	579.27	634.68	476.25	378.99	718.19	390.61	237.52	788.61		5,796.96
Sample Sets	556.33												556.33
Spec. Advertising Notices	99.39												99.39
Spec. Cooperative Advertising	1,352.69	2,166.67	1,314.02	379.82		637.58	1,137.38	827.79	1,071.62	305.83	745.81	690.27	11,179.48
Special Stunts	39.10												39.10
Squinters Broadside	170.33												170.33
Stationery for Advertising	238.00												238.00
Statement Inserts & Blotters	1,238.66					733.72		836.81	674.79	786.31	935.30	1,134.93	6,340.53
Step Folder	642.75	1,230.42									43.56		1,916.73
Tabelite Signs	855.40												855.40
Trade Journal Publicity	8,432.66	6,740.64	5,815.49	6,211.53	9,968.07	8,327.72	7,395.56	7,261.58					60,153.65
Highlights				107.79									107.79
Window Case Series	733.30												733.30
Window Displays—High Spots	1,467.54	955.70		142.09	2,561.89	5,709.45	2,845.75	1,721.93	1,676.57	1,802.58	2,389.84	80.00	21,353.34
Cath. Plaques & Zinc Etchings		451.19	438.76	1,025.75	311.42	162.35	123.88	−14.65				388.56	2,886.26
Demonstrator Items	431.80	784.76	418.91	529.20									2,464.78
Form Letters		252.04	341.09	281.44									874.57
Glarometer Company		−301.74	3,111.85										2,810.11
Licensee Packets		5.96					379.31						385.17
Little Stories of Better Vision		736.43	735.89	1,026.10									2,498.42
Neon Signs		−11.31											−11.31
Photographic Window Cards		−1.00											−1.00
House Organ		50.00											50.00
Salesmen's Presentations		265.52	616.79		864.99							2,127.73	3,875.03
Articles & Services		3,273.58	3,038.14	2,783.80	3,100.13	1,075.00	3,903.75	2,162.50	275.00	2,275.00	3,143.64	2,037.50	27,066.04
Superior Lens Cleaner		−2.34	−4.68										−7.02
Superior Lens Cl. Fr. s/c		−33.33											−33.33
Glarometer Advertising			969.66										969.66
Outdoor Glass Campaign			1,029.93	336.89			926.56	25.39					2,318.76

ADVERTISING EXPENSES—continued

Items	Year 1930	Year 1931	Year 1932	Year 1933	Year 1934	Year 1935	Year 1936	Year 1937	Year 1938	Year 1939	Year 1940	6 months 1941	11½ years total
Protection Policy Certificates			$944.10	$690.28	$185.81	$338.36	$122.70	$138.65	$97.63	$241.87	$223.68	$275.86	$2,958.64
Soft-Lite N/D Campaign			677.01										677.01
Window Cards			1,046.40	1,597.07	3,598.19	3,045.42	3,463.65	2,685.94	593.43	160.39	3,014.03	1,222.99	20,427.51
Addressograph				252.77									252.77
Broadside				1,078.04			593.48						1,671.52
How To Use Your Mailing List				119.15							156.61	114.46	390.22
Salesmen's Data Book—Kits				319.83			92.53	401.62	607.39				1,421.37
Dualens Campaign					11,070.98	1,445.52	58.39						12,574.89
Laminex Campaign					13.33								13.33
Lanning Letter Series					1,959.12								1,959.12
1715 Panoptik Campaign					130.00								130.00
Practice Builder					1,048.57	2,794.39	3,145.17	3,417.99	3,677.99	3,288.26	3,061.33	1,464.74	21,698.44
Identification Plaques					2,128.75	1,756.83	32.02	174.86	1,374.58	837.75	575.79	314.27	7,194.85
Salesmen's Appointment Card					221.44					171.99		115.74	509.17
Calendars						1,374.58	2,672.83	2,967.87			134.91		7,150.19
Hot Shot Cards						76.24			72.24	45.67			194.15
Elmer Robinson						7,711.85	8,729.03	9,251.15	8,053.31	3,034.40			36,779.74
Professional Plaques						744.73							744.73
Sales Outline						696.51							696.51
Special Product Campaign						603.86							603.86
E. P. Sweeney						2,302.20	1,832.54						4,034.74
Bifocal Calendar							56.44						56.44
Bonuses							289.00	290.00	300.00	725.00	1,215.00	50.00	2,869.00
Business Builder Order Books							154.00	193.94	75.49	79.68	269.33	118.88	891.52
Cartoon Booklets							118.86	9.10			307.89	−118.44	407.41
Counter Book							2,673.59						2,673.59
Folders and Blotters							710.87						710.87
Fourth Component Booklet							484.33						484.33
Lens Display Cases							163.75						163.75
Plan Book							146.96						146.96
Reference Books							816.41						816.41
P. W. Stone							763.85	291.05					1,054.90
A. & B. Mailing Cards								240.51					240.51
Barber Shop Boxes—Service								24.99					24.99
Combination Test Books								1,269.99					1,269.99
National Adv. Campaign								28,060.51	27,956.94	17,387.45	49,349.90	38,755.93	191,510.83

Phone Bases								157.80					157.80
Product Folder								187.94	30.00				217.94
Salaries								4,432.20	4,970.24	4,625.88	5,040.09	2,958.48	22,026.89
Salesmen's Folder Portfolio								26.14	772.02	940.90			1,739.06
Scripto Plaque								2,252.96					2,252.96
Supplementary Items—Samples & Creative Samples								540.00	7.50				547.50
Trial Case Cloths								416.00	184.14				600.14
Walnut Plaques								162.55					162.55
Christmas Cards & Postage									680.07	739.92	760.40		2,180.39
Consumer Reminder Calendar									475.57				475.57
Frailey Letter Books												293.76	293.76
Facts									240.55	146.22			386.77
1716 Fitting Table Mats									−379.43	−16.94			−396.37
Guild Memorettes									118.11				118.11
Optometrists Broadside											2,955.86	2,069.68	5,025.54
Life Mailer												310.00	310.00
Old Advertising Sales & Post									−962.76	−485.76	1,834.14	1,875.49	2,261.11
Trade Journals									6,604.87	7,559.18	9,177.55	4,779.33	28,120.93
Atomizers										98.31			98.31
Booth Tarkington Folder										167.38	107.61		274.99
Light Sensitive Eyes Folder										271.73			271.73
Protection Booklet (Imitations)										425.29			425.29
Protecto Box										−113.78			−113.78
Vandergrift Book										58.27			58.27
Retail Slants										717.03			717.03
Cleaner Mailer Reminder											52.41	362.39	414.80
National Adv. Sticker											130.38	206.02	336.40
S. E. P. Mailer											346.17	230.99	577.16
Publicity Mats											111.78		111.78
Sport Shade Post Card											33.65		33.65
Plastic De Luxe Displays												1,636.36	1,636.36
Oculist Broadsides											918.00	728.68	1,646.68
Sport Shade Folder											170.97		170.97
Re-Examination Notice Folder												252.26	252.26
Hygeia Reprint Book												685.85	685.85

ADVERTISING EXPENSES—continued

Items	Year 1930	Year 1931	Year 1932	Year 1933	Year 1934	Year 1935	Year 1936	Year 1937	Year 1938	Year 1939	Year 1940	6 months 1941	11¼ years total
Oculist Portfolio												$624.51	$624.51
Retail Sales Meetings												60.00	60.00
Time Mailer												46.70	46.70
Net Advertising Expenses	$60,949.90	$34,627.24	$32,999.00	$30,109.50	$51,372.50	$54,211.84	$80,223.29	$105,538.22	$93,967.16	$111,601.02	$123,202.73	87,547.62	865,641.02
Adv. Exp.—Year 1929													58,762.37
Net Advertising Expenses—12½ Years													922,403.39
Selling Exp.—Year 1929, $27,100.45: Net selling expenses—12¼ years, $27,400.45	40,483.18	57,093.97	42,271.66	55,435.02	88,449.10	92,124.28	99,805.53	101,360.38	97,268.86	100,738.62	108,178.04	55,413.87	966,019.97

1717 *Exhibit U*

6TH OCTOBER 1939.

MESSRS. SOFTLITE LENS CO., LTD.,
New House, 67 Hatton Garden, E. C. 1.

DEAR SIRS, With reference to the Agreement made between our respective Companies, you will remember that this was made for a period of one year ending 1st October 1939, after which the agreement would be terminable by six months notice.

We now write to give you six months notice of our desire to terminate the agreement and would ask you to regard this letter as giving such notice of which we shall be pleased to receive your acknowledgment in due course.

A copy of this letter is being sent to your New York house.

Yours faithfully,

UNITED KINGDOM OPTICAL CO., LTD.

A true copy from the files of Soft-Lite Lens Company.

G. DEWEY.

1718 *Exhibit V*

MARCH 22, 1937.

SOFT-LITE LENS COMPANY,
119 West 57th Street, New York City.

GENTLEMEN: We received your order #10 of March 19 for one half pair #716 Duo-Site Soft Lite #1 57 mm. round. We hesitate to make up this blank for the Twin City Optical Company for the reason that we have recently removed them from our factory list. Please let us know what you wish us to do with the order under the circumstances.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.,
Lens Sales Department.

A. D. Buedingen: T. D.

1719 *Exhibit W*

SOFT-LITE LENS CO., INC.

Like Cathedral Windows Soft-Lites Soften the Light

119 West 57th Street

NEW YORK CITY

MARCH 23, 1937.

MR. A. D. BUEDINGEN,
Bausch & Lomb Optical Co., Rochester, New York.

DEAR MR. BUEDINGEN: In reply to your letter of March 22nd we wish to advise that the Twin City Optical Company is listed

as one of our Soft-Lite Distributors and, therefore, it will be satisfactory for you to fill their order No. 10 calling for ½ pair of No. 716 Duo-Site Soft-Lite No. 1, 57 mm. round.

With best wishes

Yours very truly,

SOFT-LITE LENS COMPANY, INC.
P. W. STONE

P. W. Stone: K: L. C. K.

1720 *Exhibit X*

BAUSCH & LOMB OPTICAL CO.

Established 1853

ROCHESTER, NEW YORK

DECEMBER 2, 1938.

MR. N. SINGER,
Soft-Lite Lens Co. Inc., New York City.

DEAR NAT: We are inclosing herewith a copy of a letter just addressed to the North Star Optical Company. It is needless to tell you the reason for the action we have taken.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.
B. A. R.

B. A. Ramaker: K.

Inc.

Reply should be addressed to the company, attention of tre writer.

1721 *Exhibit Y*

DECEMBER 2, 1938.

NORTH STAR OPTICAL COMPANY,
79 Chamber Street, New York City.

GENTLEMEN: We have been giving consideration to the status of your account and the basis for continuing it. While we appreciate the business you have given us in the past, we do not believe it to our best interests to continue to supply you with our licensed products. As a consequence, we are advising you that your licenses on Orthogon Lenses and Loxit Mountings will be withdrawn beginning January 1st, 1939.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.

B. A. Ramaker: K.

1722 *Exhibit Z.*

CC: NS.
CC: F.B.S.

DECEMBER 5, 1938.

Mr. B. A. RAMAKER,
Bausch & Lomb Optical Co., Rochester, New York.

DEAR BEN: Thank you very much for sending us a copy of your letter of December 2nd to the North Star Optical Company which has just been received together with your letter to Nat of the same date.

We are familiar with the circumstances and appreciate your keeping us advised of your action in the matter. It is needless to say that we are conducting an investigation so far as the sale of our product is concerned.

With kind personal regards,

Sincerely,

SOFT-LITE LENS COMPANY, INC.

R. G. Landis: lck.

1723 SOFT-LITE LENSES

ETHICALLY PUBLICIZED—INTERNATIONALLY ACCEPTED

Distributed by:

Atlas Optical Co., Inc., New Orleans, La.
Bartels Optical Company, Chicago, Ill.
Belgard, Inc., Chicago, Ill.
Belgard-Spero, Inc., Chicago, Ill.
N. P. Benson Optical Co., Inc., Minneapolis.
Berks Optical Company, Reading, Pa.
Blue Grass Optical Company, Lexington, Ky.
Brent Optical Company, Altoona, Pa.
Burleigh Optical Company, Tilton, N. H.
California Optical Co., San Francisco, Calif.
Charles E. Carlson, Inc., Brooklyn N. Y.
City Optical Company, Wilmington, N. C.
Clinton Optical Co., Rochester, N. Y.
Colonial Optical Company, New York, N. Y.
Dando & Fadden, Scranton, Pa.
The Dempsey Optical Co., Toledo, Ohio
DeWein Optical Co., Buffalo, N. Y.
Diederich Optical Co., Inc., Los Angeles, Calif.
Dow Optical Company, Chicago, Ill.
Edelstein Brothers, Syracuse, N. Y.
E. A. Eisele Company, Inc., Buffalo, N. Y.
B. K. Elliott Company, Pittsburgh, Pa.

The Fort Wayne Optical Co., Fort Wayne, Ind.
Fox Optical Company, Indianapolis, Ind.
Walter M. Freeman, Allentown, Pa.
Louis Friedlander, Inc., New York, N. Y.
Geneva Optical Company, Geneva, N. Y.
The Gracy-Wolf Optical Co., Akron, Ohio
Gregory Optical Company, Jackson, Mich.
Joseph Greiff, Inc., Brooklyn, N. Y.
Henry Hennessey, Inc., New Orleans, La.
The Hilbert Optical Co., Baltimore, Md.
A. E. Holden, Houlton, Me.
Houchin Optical Company, Newark, N. J.
Hudson Valley Optical Co., Poughkeepsie, N. Y.
Hygrade Optical Co., Inc., New York, N. Y.
Jenkel-Davidson Optical Co., San Francisco, Cal.
Johnston Optical Company, Detroit, Mich.
The F. W. King Optical Co., Cleveland, Ohio.
Kirstein Optical Co., Inc., Rochester, N. Y.
L. H. Kosh & Company, New York, N. Y.
Lehmann Optical Company, New York, N. Y.
Robert Levin, Inc., New York, N. Y.
J. E. Limeburner Co., Philadelphia, Pa.
F. H. McGary Optical Co., Bangor, Me.
McIntire, Magee & Brown Co., Philadelphia, Pa.
McLeod Optical Co., Inc., Providence, R. I.
The Milwaukee Optical Mfg. Co., Milwaukee.
R. Mohr & Sons, San Francisco, Calif.
August Neuse & Co., New York, N. Y.
Newman-Brown Optical Co., Inc., Buffalo, N. Y.
Niagara Optical Co., Buffalo, N. Y.
North Star Optical Co., Inc., New York, N. Y.
Philadelphia Optical Co., Philadelphia, Pa.
Potter & Schnackenberg, New York, N. Y.
Quinton-Duffens Optical Co., Topeka, Kan.
Reading Optical Company, Reading, Pa.
Reese Optical Co., Inc., Mansfield, Ohio
E. W. Reynolds Co., Los Angeles, Calif.
Riggs Optical Company, Chicago, Ill.
Riggs Optical Company, San Francisco, Calif.
Schroeder-Miller Optical Co., Chicago, Ill.
Schulte Optical Co., Detroit, Mich.
The Seidel Optical Service, Inc., New York, N. Y.
The Southeastern Optical Co., Richmond, Va.
The Southerland-Helms Co., Charlotte, N. C.
Southwest Optical Company, Los Angeles, Calif.
George W. Spratt Optical Co., Los Angeles, Calif.

G. & F. Stannard Co., Cincinnati, Ohio
M. E. Stern, Inc., New York, N. Y.
Superior Optical Company, Los Angeles, Calif.
Twin City Optical Co., Inc., Minneapolis, Minn.
Twin Ports Optical Co., Inc., Duluth, Minn.
Uhlemann Optical Co., Chicago, Ill.
The Walman Optical Co., Minneapolis, Minn.
Western Optical Company, Salt Lake City, Utah.
The White-Haines Optical Co., Columbus, Ohio
Wilson & Halford Optical Co., Boston, Mass.
The Winchester Optical Co., Horseheads, N. Y.
York Optical Company, Inc., York, Pa.

1724 *Exhibit BB*

PLANO MENISCUS

	Less than 5	5 or 10	25	50	No. dist.
50 m:					
2/27/39 in effect until 4/1	1.95	1.75	1.46	1.17	1.03
4/1/39	1.85	1.75	1.55	1.35	1.05
1/2/40 (same)	1.85	1.75	1.55	1.35	1.20
57 m:					
2/27/39 in effect until 4/1	2.50	2.30	1.92	1.53	1.35
4/1/39	2.50	2.30	2.05	1.80	1.38
1/2/40—10¢ down	2.40	2.20	1.95	1.70	1.40
63 m:					
2/27/39 until 4/1	3.10	2.85	2.37	1.90	1.65
4/1/39	3.10	2.85	2.50	2.15	1.71
1/2/40—15¢ down	2.95	2.70	2.35	2.00	1.70
71 m:					
2/27/39 until 4/1	3.60	3.35	2.79	2.23	1.90
4/1/39	3.60	3.35	2.95	2.55	2.01
1/2/40—5¢ down	3.55	3.30	2.90	2.50	2.00
80 m:					
2/27/39 until 4/1	4.35	4.10	3.42	2.73	2.30
4/1/39	4.35	4.10	3.65	3.20	2.46
1/2/40—20¢ down	4.15	3.90	3.45	3.00	2.40

1725 *Exhibit 66*

9/9/41.

SOFT-LITE DISTRIBUTORS

Atlas Optical Company, New Orleans, La.
Bartels Optical Co., Chicago, Ill.
Belgard, Inc., Chicago, Ill.
Belgard-Spero, Inc., Chicago, Ill.
N. P. Benson Optical Co., Minneapolis, Minn.
Berks Optical Company, Reading, Pa.
Bishop Optical Company, Bluefield, W. Va.
Blue Grass Optical Co., Lexington, Ky.
Boll & Lewis Opt. Co., Chicago, Ill.
Bradley Optical Co., Los Angeles, Calif.

Brent Optical Company, Altoona, Pa.
Burleigh Optical Co., Tilton, N. H.
Charles E. Carlson, Inc., Brooklyn, N. Y.
Central States Opt. Co., Chicago, Ill.
City Optical Company, Wilmington, N. C.
Clinton Optical Co., Rochester, N. Y.
Colonial Optical Co., New York, N. Y.
Connecticut Optical Co., Waterbury, Conn.
Dalton-Webb Optical Co., Toledo, Ohio.
Dando & Fadden, Scranton, Pa.
Dewein Optical Company, Buffalo, N. Y.
Diederich Optical Co., Los Angeles, Calif.
Dorr Optical Company, Beverly Hills, Calif.
Dow Optical Company, Chicago, Ill.
Dubois Optical Co., Dubois, Pa.
Easton Optical Co., Easton, Pa.
Edelstein Bros., Syracuse, N. Y.
B. K. Elliott Co., Pittsburgh, Pa.
Fort Wayne Opt. Co., Fort Wayne, Ind.
Fox Optical Company, Indianapolis, Ind.
Louis Friedlander, Inc., New York, N. Y.
Geneva Optical Co., Geneva, N. Y.
Gracy Wolf Opt. Co., Akron, Ohio.
Joseph Greiff, Inc., Brooklyn, N. Y.
Gregory Optical Co., Jackson, Michigan.
Henry Hennessey, Inc., New Orleans, La.
Hilbert Optical Co., Baltimore, Maryland.
A. E. Holden, Houlton, Maine.
Houchin Optical Co., Newark, N. J.
Hubbard-Leslie Opt. Co., Toledo, Ohio.
Hudson Valley Opt. Co., Poughkeepsie, N. Y.
Hygrade Optical Co., New York, N. Y.
Jenkel-Davidson Opt. Co., San Francisco, Calif.
Johnston Optical Co., Detroit, Michigan.
Kalamazoo Optical Co., Kalamazoo, Michigan.
F. W. King Optical Co., Cleveland, Ohio.
Kirstein Optical Co., Rochester, N. Y.
Klauer Optical Co., Dubuque, Iowa.
1726 L. H. Kosh & Company, New York, N. Y.
Lehigh Optical Co., Allentown, Pa.
Lehmann Optical Co., New York, N. Y.
Robert Levin, Inc., New York, N. Y.
J. E. Limeburner Co., Philadelphia, Pa.
Linden Optical Co., Allentown, Pa.
Maves Optical Co., Grand Forks, N. D.

F. H. McGary Opt. Co., Bangor, Maine.
McClenaghen Optical Co., Philadelphia, Pa.
McIntire Magee & Brown Co., Philadelphia, Pa.
McLeod Optical Co., Providence, R. I.
Miller Optical Co., Chicago, Ill.
Milwaukee Optical Mfg. Co., Milwaukee, Wisc.
S. R. Nay Optical Co., Battle Creek, Michigan.
August Neuse & Co., New York, N. Y.
Newman Brown Opt. Co., Buffalo, N. Y.
Niagara Optical Co., Buffalo, N. Y.
North Star Opt. Co., New York, N. Y.
Ohio Optical Co., Canton, Ohio.
Paramount Optical Co., Indianapolis, Ind.
Philadelphia Opt. Co., Philadelphia, Pa.
Phoenix Optical Co., Bay City, Michigan.
Potter & Schnackenberg, New York, N. Y.
Quinton Duffens Opt. Co., Topeka, Kansas.
Ray Optical Company, Lewiston, Maine.
Reading Optical Co., Reading, Pa.
Reese Optical Co., Mansfield, Ohio.
Riggs Optical Co., Chicago, Ill.
Riggs Optical Co., San Francisco, Calif.
Schroeder Miller Opt. Co., Chicago, Ill.
Schulte & Fox Opt. Lab., Detroit, Michigan.
Schulte Optical Co., Detroit, Michigan.
Seidel Optical Service, New York, N. Y.
Silbert Optical Co., Buffalo, N. Y.
Southeastern Optical Co., Richmond, Virginia.
Southerland-Helms Co., Charlotte, N. C.
Southwest Optical Co., Los Angeles, Calif.
Geo. W. Spratt Opt. Co., Los Angeles, Calif.
G & F Stannard Co., Cincinnati, Ohio.
M. E. Stern, Inc., New York, N. Y.
Superior Optical Co., Los Angeles, Calif.
Tennessee Opt. Co., Knoxville, Tenn.
Twin City Optical Co., Minneapolis, Minn.
Twin Ports Optical Co., Duluth, Minn.
Uhlemann Optical Co., Chicago, Ill.
Wallace Optical Co., Lansing, Michigan.
Walman Optical Co., Minneapolis, Minn.
Western Optical Co., Salt Lake City, Utah.
White Haines Optical Co., Columbus, Ohio.

Wilson & Halford Opt. Co., Boston, Mass.
Winchester Optical Co., Horseheads, N. Y.
York Optical Company, York, Pa.

1727 SOFT-LITE DISTRIBUTORS NOT ON BAUSCH & LOMB LIST

Dubois Optical Co., Dubois, Pa.
Easton Optical Co., Easton, Pa.
B. K. Elliott Co., Pitsburgh, Pa.
Hubbard-Leslie Opt. Co., Toledo, Ohio.
S. R. Nay Opt. Co., Battle Creek, Mich.
North Star Optical Co., New York City.
Ohio Optical Co., Canton, Ohio.
Phoenix Optical Co., Bay City, Michigan.
Schulte & Fox Opt. Lab., Detroit, Michigan.
Schulte Optical Co., Detroit, Michigan.
Independent Optical Co., Rome, New York.
Muncie Optical Co., Muncie, Indiana.
Owen Optical Co., Schenectady, N. Y.
Ray Rodig, Tucson Optical Service, Tuscon, Arizona.
E. W. Smith, Bridgeport, Conn.

1728 BAUSCH & LOMB DISTRIBUTORS NOT ON SOFT-LITE LIST

Philip Apfel Co., New York City.
Brooks Optical Co., San Antonio, Texas.
Caldwell Optical Co., Kansas City, Miss. (Soft-Lite Retail Stock Licensee.)
Dempsey Optical Co., Toledo, Ohio.
Arthur Frank & Co., New York City.
O. H. Gerry Opt. Co., Kansas City, Missouri (Soft-Lite Retail Stock Licensee).
Kirkland Optical Co., Utica, N. Y.
Knoxville Optical Co., Knoxville, Tenn. (Soft-Lite Retail Stock Licensee.)
Lantz Optical Dispensary, St. Cloud, Minn.
Littlewood Opt. Co., Amsterdam, N. Y.
Mayer Bros., Seattle, Wash.
Physicians Opt. Co., Sioux City, Iowa.
Jos. Schwartz, Honolulu, T. H.
Taylor Optical Co., Detroit, Mich.
Weiss & Sons, Montgomery, Alabama.

1729

Exhibit DD

HUBBELL, TAYLOR, GOODWIN, NIXON & HARGRAVE

Attorneys and Counselors at Law

31 Exchange Street

ROCHESTER, N. Y.

JUNE 25, 1937.

Mr. H. H. WILLIAMSON,
Bausch & Lomb Optical Company,
635 St. Paul Street, Rochester, New York.

DEAR HART: I return herewith the file of correspondence between Nat Singer and Ben Ramaker relative to Singer's oft-repeated request for an assurance that Panoptik Company will not permit its licensees to sell any tinted Panoptik lens at a price less than Panoptik Soft-Lite lens.

In view of the record which has been made by prior correspondence, it does not seem to me necessary to correct Nat's understanding as recited in his letter of May 27, 1937. In other words, the fact that he has advised Ben that he has an understanding based upon Ben's letter of May 24, 1937, which is certainly not justified by the language of such letter, does not seem to me to justify the continuance of what would apparently be an endless correspondence.

While our failure to reply to Nat's letter might constitute some evidence of our acceptance of his interpretation of Ben's letter, I think the existence of the prior correspondence indicates a sufficient justification for not replying to the letter; namely, that the correspondence would go on interminably.

Very truly yours,

FRANK E. DEVANS.

F. E. D./J. M.
Encls:

1730 *Exhibit EE*

BAUSCH & LOMB OPTICAL CO.

ROCHESTER, N. Y.

MARCH 30, 1939.

Mr. R. G. LANDIS,
Soft-Lite Lens Company,
745 Fifth Avenue, New York City.

DEAR RAY: We have given consideration to the whole matter of Soft-Lite Kryptoks as you have presented it.

This Kryptok situation is a very difficult one, and to be perfectly frank with you, we do not see how you can work out any Kryptok Soft-Lite plan that will be advantageous to us, to you, or to the Distributors.

Our white Kryptok prices have been determined by competitive conditions which none of us have been able to govern, but the situation on Duosite and Soft-Lite D etc., has not been governed by competitive conditions. When Balcor K prices dropped from $1.70 to $1.13 per pair, and when regular Kryptoks dropped from $1.38 to 92¢ per pair, it took every bit of profit out of Kryptoks for us; but we have maintained the Balcor K cleared Kryptok business, and by so doing have maintained the prescription prices for the Distributors on first quality Kryptoks.

Your Duosite prices have not been based upon the Balcor K price, but have been established on the basis of the cost of producing them; and you have been able to work out a schedule which is fair and profitable to everybody.

As we see it, your thought is to have a Soft-Lite uncleared Kryptok to offer at a price lower than that of the Duosite, but we have not had a big business on the uncleared Kryptok at 92¢.

We have gone over your proposition very carefully, and can say definitely that we are not in a position to do anything about the Duosite semifinished price at $1.47, or the Soft-Lite rough Kryptok blank price at 90¢. We could supply you with uncleared Duosites at $1.26 per pair.

1731 Our uncleared white Kryptok is 21¢ less than the Balcor K; and this would make your uncleared Kryptok 21¢ less than the Duosite.

This amount of saving is probably not enough to enable you to make a price to the Distributors that will attract much new business, and the apparent saving would be lost when you consider the lower quality. Furthermore, whatever sales you get may come from Duosite business.

All in all, this does not look encouraging, but we are not in a position to offer a more attractive setup.

Very truly yours,

BAUSCH & LOMB OPTICAL CO.
(Signed) SCOTT STERLING.

S. Sterling: M. C.

1732 In the Supreme Court of the United States

October Term, 1943

No. 62

[Title omitted.]

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed May 22, 1943

1. Now comes the appellant in the above-entitled cause and for its statement of the points on which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. The appellant states that the following parts of the record are necessary for the consideration of the foregoing points and therefore designates them as parts of the record to be printed by the Clerk of the Supreme Court of the United States:

(1) Bill of complaint.

(2) Answer of each defendant to the bill of complaint.

(3) Official record of the stenographic minutes, containing the transcript of evidence and proceedings before the Honorable Simon H. Rifkind, United States District Judge, Southern District of New York, on September 16, 17, 18, 19, 24, 25, 26, and 29, 1941.

(4) The following exhibits:

(a) Plaintiff's Exhibits 1–10a inclusive, 11–38 inclusive, 42–207 inclusive.

(b) Defendants' Exhibits K, L, Q, R, S, U, V, W, DD, and EE.

1733 (5) Opinion of Honorable Simon H. Rifkind, United States District Judge, Southern District of New York, dated May 27, 1942.

(6) Plaintiff's proposed findings of fact and conclusions of law.
(7) Findings of fact and conclusions of law, filed November 6, 1942.
(8) Motion to make additional findings of fact.
(9) Order making additional finding of fact and the additional finding of fact.
(10) Final judgment of the District Court, filed February 1, 1943.
(11) Petition for appeal.
(12) Assignment of errors and prayer for reversal.
(13) Order allowing appeal.
(14) Proof of service.
(15) Plaintiff's statement required by Rule 12.
(16) Citation.
(17) Statement of jurisdiction.
(18) Praecipe for transcript of this record.
(19) Praecipe for cross appeal.
(20) Proof of service of cross appeal papers.
(21) Petition for cross appeal, assignment of errors, prayer for reversal.
(22) Statement of jurisdiction of cross appeal.
(23) Order allowing cross appeal.
(24) Defendants' statement required by Rule 12.
(25) Citation on cross appeal.
(26) Stipulation as to transcript of record.
1734 (27) Certificate of the Clerk of the District Court.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

Service of the Foregoing Statement of Points to be Relied Upon, Designation of Parts of the Record Necessary for Consideration Thereof and receipt of a copy thereof, are acknowledged this 15th day of May 1943.

SIMPSON, THACHER & BARTLETT.
Simpson, Thacher & Bartlett,
Attorneys for respondents, Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker and Joseph F. Taylor.

WEBSTER & GARSIDE.
Webster & Garside,
Attorneys for respondents, Soft-Lite Lens Company, Inc., Nathaniel Singer, R. G. Landis and Morris Singer.

1736 In the District Court of the United States for the Southern District of New York

No. 64

[Title omitted.]

Statement of points to be relied upon, designation of parts of the record necessary for consideration thereof

Filed May 17, 1943

To the Clerk of the Supreme Court of the United States:

1. Now come the defendants-appellants Soft-Lite Lens Company, Inc., Morris Singer, R. G. Landis, and Nathaniel Singer and for their statement of the points on which they intend to rely in their appeal to this Court adopt the points contained in their assignment of errors heretofore filed herein.

2. The defendants-appellants state that, in addition to the portions of the record indicated as necessary by the United States in its Statement of Points to be Relied Upon and Designation of Parts of the Record necessary for consideration thereof served May 15th 1943, the following parts of the record are necessary for the consideration of the foregoing points and are therefore designated as parts of the record to be printed by the Clerk of the Supreme Court of the United States.

1737 (1) Plaintiff's Exhibits 10B, 39 through 41 inclusive.

(2) Defendant's Exhibits A, B, C, D, E, F, G, H, I, J, M, N, O, P, S1, T, X, Y, Z, AA, BB, and CC.

(3) Defendant-Appellant's appeal bond.

BETHUEL M. WEBSTER,
Bethuel M. Webster,
Attorney for Defendants-Appellants
Soft-Lite Lens Company, Inc.
Nathaniel Singer, R. G. Landis, Morris Singer.

Service of the Foregoing Statement of Points to be Relied Upon, Designation of Parts of the Record Necessary for Consideration Thereof and receipt of a copy thereof, are acknowledged this 15th day of May 1943.

CHARLES FAHY.

1744 Supreme Court of the United States

No. 62—October Term, 1943

THE UNITED STATES OF AMERICA, APPELLANT

vs.

BAUSCH & LOMB OPTICAL COMPANY, ET AL.

Order noting probable jurisdiction

June 1, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

1746 Supreme Court of the United States

No. 64—October Term, 1943

SOFT-LITE LENS COMPANY, INC., ET AL., APPELLANTS

vs.

THE UNITED STATES OF AMERICA

Order noting probable jurisdiction

June 1, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

1748 In Supreme Court of the United States

[Title omitted.]

Stipulation as to record

Filed July 26, 1943

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto:

(1) That the Clerk of the Supreme Court need not print all pages of plaintiff's exhibits 38, 41 for identification, 59 for identification, 155 for identification, 165 and 167; and he need not print

all pages of defendants' exhibit B. The portions of said exhibits that it is necessary to print are described below:

(a) No part of plaintiff's exhibits 38, 41 for identification, 59 for identification, 165 and 167 need be printed.

(b) Only the cover page entitled "*Prescription & Stock Catalogue*" and pages 18, 19, 21, 22, and 23 of plaintiff's exhibit 155 for identification need be printed.

1749 (c) The last page of defendants' exhibit B, which page is entitled "Challenge Frame Line" need not be printed; it is necessary, however to print all other pages of said exhibit B.

(2) That defendants' exhibits K and BB, which are handwritten, may be printed in type, and the handwriting need not be reproduced.

(3) That any party may quote or refer, in its briefs and, if it does so, upon argument, to any part of any exhibit omitted from printing, as if said exhibit had been printed in full, and the party so quoting or referring shall furnish the Court and opposing counsel with copies or photostats of the whole of any exhibit so quoted from or referred to.

CHARLES FAHY,
Charles Fahy, *Solicitor General.*

SIMPSON, THATCHER & BARTLETT,
Simpson, Thatcher & Bartlett,
Attorneys for Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, and Joseph F. Taylor.

BETHUEL M. WEBSTER,
Webster & Garside,
By E. L. REA,
Attorneys for Soft-Lite Lens Company, Inc., Nathaniel Singer, R. G. Landis, and Morris Singer.

[Endorsement on cover:] File No. 47522, 47529. D. C. U. S., Southern New York. Term No. 62. The United States of America, Appellant, vs. Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker, Joseph F. Taylor, Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis. Term No. 64. Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis, Appellants, vs. The United States of America. Filed May 12, 1943, May 15, 1943. Term No. 62 O. T. 1943, 64 O. T. 1943.

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U. S. GOVERNMENT PRINTING OFFICE: 1943